IN THE APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI (APPELLATE JURISDICTION)

APPEAL NOS. 44, 60, 248 of 2015, 93 OF 2015 WITH IA NO. 141 OF 2015, APPEAL NOS. 299, 300 OF 2014 & APPEAL NO. 249 OF 2016

AND

APPEAL NOS. 294, 295 of 2014, 248 of 2014 WITH IA NO. 407 OF 2014, 249 OF 2014 WITH IA NO. 408 OF 2014 & APPEAL NOS. 05, 35, 36, 37, 38, 39, 40, 262, 249 OF 2015 & APPEAL NO. 265 OF 2016 WITH IA NO. 553 OF 2016

Dated: 27th September, 2017

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member

(GENERATORS GROUP)

APPEAL NOS. 44, 60, 248 of 2015, 93 OF 2015 WITH IA NO. 141 OF 2015, APPEAL NOS. 299, 300 OF 2014 & APPEAL NO. 249 OF 2016

IN THE MATTER OF :-

APPEAL NO. 44 OF 2015

API ISPAT & POWERTECH (P) LTD.)
Near Industrial Growth Centre)
Siltara Phase - II)
Raipur, Chhattisgarh – 493221) ... Appellant

Versus

1 CHHATTISGARH STATE POWER)
DISTRIBUTION CO. LTD.)
4th Floor, Vidyut Seva Bhavan,)
Daganiya, Raipur,)
Chhattisgarh – 492 013) ...Respondent No. 1

2. CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION)
Irrigation Colony, New Shanti Nagar, Raipur, Chhattisgarh - 492 001)

...Respondent No. 2

Counsel for the Appellant(s) : Mr. Raunak Jain

Counsel for the Respondent(s) : Mr. K. Gopal Choudhary
Mr. Arvind Banerjee
Mr. S.K. Pandey
Mr. Manoj Khare
Mr. Ravi Sharma
Mr. A. Bhatnagar for R-1

Mr. M G Ramachandran
Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Mr. Ishaan Mukherjee
Ms. Neha Garg for R-2

APPEAL NO. 60 OF 2015

API ISPAT & POWERTECH (P) LTD.)
Near Industrial Growth Centre)
Sitara Phase - II)
Raipur, Chhattisgarh – 493221) ... Appellant

Versus

1 CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.)
4th Floor, Vidyut SevaBhavan,)
Daganiya, Raipur,)
Chhattisgarh – 492 013) ...Respondent No. 1

2. CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION)

Irrigation Colony, New Shanti Nagar, Raipur, Chhattisgarh - 492 001))) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. Raunak Jain

Counsel for the Respondent(s) : Mr. K. Gopal Choudhary
Mr. Arvind Banerjee
Mr. S.K. Pandey
Mr. Manoj Khare
Mr. Ravi Sharma
Mr. A. Bhatnagar for R-1

Mr. M G Ramachandran
Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-2

APPEAL NO. 299 OF 2014

SALASAR STEEL & POWER LTD.)
1st Floor, Bhatia Complex)
Opp. Rajkumar College, G.E. Road)
Raipur, Chhattisgarh – 492 001) ... Appellant

Versus

1 CHHATTISGARH STATE POWER)
DISTRIBUTION CO. LTD.)
4th Floor, Vidyut Seva Bhavan,)
Daganiya, Raipur,)
Chhattisgarh – 492 013) ...Respondent No. 1

2. CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION))
Irrigation Colony, New Shanti Nagar, Raipur, Chhattisgarh - 492 001))) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. Raunak Jain

Counsel for the Respondent(s) : Mr. K. Gopal Choudhary
Mr. S.K. Pandey
Mr. A. Bhatnagar for R-1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-2

APPEAL NO. 300 OF 2014

SALASAR STEEL & POWER LTD.
1st Floor, Bhatia Complex
Opp. Rajkumar College, G.E. Road
Raipur, Chhattisgarh – 492 001 ... **Appellant**

Versus

1 CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.
4th Floor, Vidyut Seva Bhavan,
Daganiya, Raipur,
Chhattisgarh – 492 013 ...**Respondent No. 1**

2. CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION
Irrigation Colony, New Shanti Nagar, Raipur, Chhattisgarh - 492 001 ...**Respondent No. 2**

Counsel for the Appellant(s) : Mr. Raunak Jain

Counsel for the Respondent(s) : Mr. K. Gopal Choudhary
Mr. S.K. Pandey
Mr. A. Bhatnagar for R-1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-2

APPEAL NO. 248OF 2015

S.K.S ISPAT & POWER LTD.)
Phase – 2, Siltara Industrial Area)
18 KM Mile Stone , Bilaspur Road)
Raipur – 493111, Chhattisgarh) ... Appellant

Versus

1 CHHATTISGARH STATE POWER)
DISTRIBUTION CO. LTD.)
4th Floor, Vidyut Seva Bhavan,)
Daganiya, Raipur,)
Chhattisgarh – 492 013) ...Respondent No. 1

2. CHHATTISGARH STATE ELECTRI-CITYREGULATORY COMMISSION)
Irrigation Colony, New Shanti Nagar, Raipur, Chhattisgarh - 492 001) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. Aashish Anand Bernard
Mr. Paramhans
Mr. Raunak Jain

Counsel for the Respondent(s) : Mr. K. Gopal Choudhary for R-1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Neha Garg
Mr. Sandeep Rajpurohit
Mr. Ishaan Mukherjee for R-2

APPEAL NO. 249 OF 2016

GODAWARI POWER & ISPAT LTD.)
428/2, Phase-I, Industrial Area)
Siltara, Raipur,)
Chhattisgarh – 493 111) **... Appellant**

Versus

1 CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.)
4th Floor, Vidyut Seva Bhavan,)
Daganiya, Raipur,)
Chhattisgarh – 492 013) **...Respondent No. 1**

2. CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION)
Irrigation Colony, New Shanti Nagar, Raipur, Chhattisgarh - 492 001) **...Respondent No. 2**

Counsel for the Appellant(s) : Mr. Raunak Jain

Counsel for the Respondent(s) : Mr. K. Gopal Choudhary
Mr. Arvind Banerjee for R-1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R-2

APPEAL NO.93 OF 2015 WITH IA NO. 141 OF 2015

1. G.R. SPONGE AND POWER LTD.)
Agrawal Complex, Samta Colony)
Raipur, Chattisgarh) **... Appellant No.1**

2. SHREE NAKODA ISPAT LIMITED)
Near Railway Crossing, Mowa)
PO Shankar Nagar,)
Raipur – 492 007) **... Appellant No.2**

Versus

1	**CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION** **Irrigation Colony, New Shanti Nagar, Raipur,** **Chhattisgarh - 492 001**	**)**	**...Respondent No. 1**
2.	**CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.** **4th Floor, Vidyut Seva Bhavan,** **Daganiya, Raipur,** **Chhattisgarh – 492 013**	**)**	**...Respondent No. 2**

Counsel for the Appellant(s) : Mr. Aashish Anand Bernard
Mr. Saras Kumar
Mr. Paramhans

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Neha Garg
Mr. Sandeep Rajpurohit
Mr. Ishaan Mukherjee for R-1

Mr. K. Gopal Choudhary
Mr. Arvind Banerjee
Mr. S.K. Pandey
Mr. Manoj Khare for R-2

(LICENSEE GROUP)

APPEAL NOS. 294, 295 of 2014, 248 of 2014 WITH IA NO. 407 OF 2014, 249 OF 2014 WITH IA NO. 408 OF 2014 & APPEAL NOS. 05, 35, 36, 37, 38, 39, 40, 262, 249 OF 2015 & APPEAL NO. 265 OF 2016 WITH IA NO. 553 OF 2016

IN THE MATTER OF :-

APPEAL NO. 294 OF 2014

CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.
4th Floor, Vidyut Seva Bhavan,
Daganiya, Raipur – 492 013 ... **Appellant**

Versus

1. **CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION**
Irrigation Colony, New Shanti Nagar, Raipur, Chhattisgarh - 492 001 ...**Respondent No. 1**

2. **SALASAR STEEL & POWER LTD.**
1st Floor, Bhatia Complex
Opp. Rajkumar College, G.E. Road
Raipur, Chhattisgarh – 492 001 ...**Respondent No. 2**

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. Manoj Khare
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Raunak Jain for R-2

APPEAL NO. 295 OF 2014

CHHATTISGARH STATE POWER

DISTRIBUTION CO. LTD.)
4th Floor, Vidyut Seva Bhavan,)
Daganiya, Raipur – 492 013) **... Appellant**

Versus

1 CHHATTISGARH STATE ELECTRI- CITY REGULATORY COMMISSION)
Irrigation Colony, New Shanti)
Nagar, Raipur, Chhattisgarh - 492 001) **...Respondent No. 1**

2. SALASAR STEEL & POWER LTD.)
1st Floor, Bhatia Complex)
Opp. Rajkumar College, G.E. Road)
Raipur, Chhattisgarh – 492 001) **...Respondent No. 2**

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Raunak Jain for R-2

APPEAL NO. 248 OF 2014 WITH IA NO. 407 OF 2014

CHHATTISGARH STATE POWER)
DISTRIBUTION CO. LTD.)
4th Floor, Vidyut Seva Bhavan,)
Daganiya, Raipur – 492 013) **... Appellant**

Versus

1 CHHATTISGARH STATE ELECTRI- CITY REGULATORY COMMISSION)

Irrigation Colony, New Shanti Nagar, Raipur, Chhattisgarh - 492 001) ...Respondent No. 1

2. SALASAR STEEL & POWER LTD.
1st Floor, Bhatia Complex
Opp. Rajkumar College, G.E. Road
Raipur, Chhattisgarh – 492 001) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. Arvind Banerjee
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Raunak Jain for R-2

APPEAL NO. 249 OF 2014 WITH IA NO. 408 OF 2014

CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.
4th Floor, Vidyut Seva Bhavan,
Daganiya, Raipur – 492 013) ... Appellant

Versus

1 CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION
Irrigation Colony, New Shanti Nagar, Raipur, Chhattisgarh - 492 001) ...Respondent No. 1

2. SALASAR STEEL & POWER LTD.
1st Floor, Bhatia Complex
Opp. Rajkumar College, G.E. Road

Raipur, Chhattisgarh – 492 001) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Raunak Jain for R-2

APPEAL NO. 5 OF 2015

CHHATTISGARH STATE POWER)
DISTRIBUTION CO. LTD.)
4th Floor, Vidyut Seva Bhavan,)
Daganiya, Raipur – 492 013) ... Appellant

Versus

1 CHHATTISGARH STATE ELECTRI-)
CITY REGULATORY COMMISSION)
Irrigation Colony, New Shanti)
Nagar, Raipur, Chhattisgarh - 492)
001) ...Respondent No. 1

2. SALASAR STEEL & POWER LTD.)
1st Floor, Bhatia Complex)
Opp. Rajkumar College, G.E. Road)
Raipur, Chhattisgarh – 492 001) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Raunak Jain for R-2

APPEAL NO. 35 OF 2015

CHHATTISGARH STATE POWER)
DISTRIBUTION CO. LTD.)
4th Floor, Vidyut Seva Bhavan,)
Daganiya, Raipur – 492 013) ... Appellant

Versus

1 CHHATTISGARH STATE ELECTRI-)
CITY REGULATORY COMMISSION)
Irrigation Colony, New Shanti)
Nagar, Raipur, Chhattisgarh - 492)
001) ...Respondent No. 1

2. BHAGWATI POWER & STEEL LTD.)
Siltara Industrial Area Phase – II)
Village Dharsiwa, Raipur – 493 211) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Aashish Anand Bernard
Mr. Paramhans

Mr. Sanjay Kumar
Mr. Saras Kumar for R-2

APPEAL NO. 36 OF 2015

CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.
4th Floor, Vidyut Seva Bhavan,
Daganiya, Raipur – 492 013) **... Appellant**

Versus

1 **CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION**
Irrigation Colony, New Shanti Nagar,
Raipur, Chhattisgarh - 492 001) **...Respondent No. 1**

2. **GOPAL SPONGE & POWER (P) LTD.**
No.90, Phase-II, Siltara Industrial
Growth Centre, Raipur – 493 111) **...Respondent No. 2**

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Raunak Jain for R-2

APPEAL NO. 37 OF 2015

CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.
4th Floor, Vidyut Seva Bhavan,)

Daganiya, Raipur – 492 013) ... Appellant

Versus

1 CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION)
Irrigation Colony, New Shanti Nagar,)
Raipur, Chhattisgarh - 492 001)
) ...Respondent No. 1

2. API ISPAT & POWERTECH (P) LTD.)
17/201, Ashoka Ratna Vidhan Sabha)
Road, Raipur – 492 001) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Raunak Jain for R-2

APPEAL NO. 38 OF 2015

CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.)
4th Floor, Vidyut Seva Bhavan,)
Daganiya, Raipur – 492 013) ... Appellant

Versus

1 CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION)
Irrigation Colony, New Shanti Nagar,)
Raipur, Chhattisgarh - 492 001)
) ...Respondent No. 1

2. API ISPAT & POWERTECH (P) LTD.)
17/201, Ashoka Ratna Vidhan Sabha)
Road, Raipur – 492 001) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Raunak Jain for R-2

APPEAL NO. 39 OF 2015

CHHATTISGARH STATE POWER)
DISTRIBUTION CO. LTD.)
4th Floor, Vidyut Seva Bhavan,)
Daganiya, Raipur – 492 013) ... Appellant

Versus

1 CHHATTISGARH STATE ELECTRI-)
CITY REGULATORY COMMISSION)
IrrigationColony, New Shanti Nagar,)
Raipur, Chhattisgarh - 492 001)
) ...Respondent No. 1
2. G.R. SPONGE & POWER LTD.)
Agrawal Complex, Samta Colony)
Raipur – 492 001) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Aashish Anand Bernard for R2

APPEAL NO. 40 OF 2015

CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.
4th Floor, Vidyut Seva Bhavan,
Daganiya, Raipur – 492 013 ... **Appellant**

Versus

1 CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION
Irrigation Colony, New Shanti Nagar,
Raipur, Chhattisgarh - 492 001 ...**Respondent No. 1**

2. SHREE NAKODA ISPAT LTD.
Near Railway Crossing
Mowa, P.O. Shankar Nagar ...**Respondent No. 2**
Raipur – 492 007

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. A. Bhatnagar

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Neha Garg
Mr. Ishaan Mukherjee
Ms. Akshi Seem for R-1

Mr. Aashish Anand Bernard for R2

APPEAL NO. 262 OF 2015

CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.
4th Floor, Vidyut Seva Bhavan,
Daganiya, Raipur – 492 013 ... **Appellant**

Versus

1 **CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION**
Irrigation Colony, New Shanti Nagar,
Raipur, Chhattisgarh - 492 001 ...**Respondent No. 1**

2. **API ISPAT & POWERTECH (P) LTD.**
17/201, Ashoka Ratna,Vidhan Sabha
Road Raipur – 492 001 ...**Respondent No. 2**

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Neha Garg for R-1

Mr. Raunak Jain for R-2

APPEAL NO. 249 OF 2015

CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD.
4th Floor, Vidyut Seva Bhavan,
Daganiya, Raipur – 492 013 ... **Appellant**

Versus

1 **CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION**
Irrigation Colony, New Shanti Nagar,

Raipur, Chhattisgarh - 492 001) ...Respondent No. 1

2. S.K.S. ISPAT & POWER LTD.
Phase – 2, Siltara Industrial Area
Raipur - 493111) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. Manoj Khare

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ishaan Mukherjee for R-1

Mr. Aashish Anand Bernard
Mr. Paramhans for R-2

APPEAL NO. 265 OF 2016 WITH IA No. 553 of 2016

CHHATTISGARH STATE POWER
DISTRIBUTION CO. LTD.
4th Floor, Vidyut Seva Bhavan,
Daganiya, Raipur – 492 013) ... Appellant

Versus

1 CHHATTISGARH STATE ELECTRICITY REGULATORY COMMISSION
Irrigation Colony, New Shanti Nagar,
Raipur, Chhattisgarh - 492 001) ...Respondent No. 1

2. GODAWARI POWER & ISPAT LTD.
Hira Arcade, Near New Bus Stand
Pandri, Raipur – 492 001) ...Respondent No. 2

Counsel for the Appellant(s) : Mr. K. Gopal Choudhary
Mr. Arvind Banerjee

Counsel for the Respondent(s) : Mr. Ravi Sharma for R-1

Mr. M.G. Ramachandran
Mr. Raunak Jain for R-2

JUDGMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

A. Generators Group

APPEAL NOS. 44, 60, 248 of 2015, 93 OF 2015 WITH IA NO. 141 OF 2015, APPEAL NOS. 299, 300 OF 2014 & APPEAL NO. 249 OF 2016

1. The above mentioned Appeals are being filed by various generators being clubbed as the Generators Group (hereinafter referred to as the **"Generator Group Appellants"**) under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the "**Act**") challenging the various Orders detailed at S. No. A. 2. below (**"Impugned Orders"**) passed by the Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as the **"State Commission"**),in various Petitions filed by the Generator Group Appellants. The State Commission has disposed of the said petitions filed by the Generator Group Appellants under Section 86(1)(f) of the Act for adjudication of disputes between the Chhattisgarh State Power Distribution Company Ltd. (CSPDCL) (hereinafter referred to as the **"Respondent No.1/CSPDCL"** in Generators Group) and the Generator Group Appellants involving Cross-Subsidy Surcharge ("**CSS**") when a generator is not a Captive Generation Plant **("CGP")**or otherwise has been declared a non-captive generating plant in pursuance of the provision of sub-

rule (2) of Rule 3 of the Electricity Rules, 2005 and adjustment of Parallel Operation Charges **(“POC”)**.

2. Details of the Generator Group Appellants:

a) Appeal No. 44 of 2015 and Appeal No. 60 of 2015 have been filed by M/s. API Ispat & Powertech (P) Ltd., a company registered under the Companies Act, 1956 which is engaged primarily in the manufacture of sponge iron, billets and generation of power, besides mining of iron ore, coals, and other minable ores; manufacturing raw, semi-finished and finished steel. It has established a 350 tpd sponge iron kiln and two 12 MT induction furnaces at Siltara, Raipur. To meet its captive power requirements, it has also set up generation plant of 15 MW out of which 8 MW is generated through Waste Heat Recovery Boiler (WHRB) route and remaining 7 MW is generated through Atmospheric Fluidised Bed Combustion (AFBC) route. The said Appeals have been filed against the Orders dated 22.12.2014 & 29.11.2014 of the State Commission in Petition Nos. 69 of 2013 (D) & 54 of 2013 (D) regarding loss of Captive/ CGP status of it in FY 2007-08 & 2008-09 respectively.

b) Appeal Nos. 299 of 2014 and 300 of 2014 have been filed by M/s Salasar Steel & Power Ltd., a company registered under the Companies Act, 1956 which has installed a 15 MW and 65 MW power plant along with a 2x100 TPD sponge iron manufacturing unit at Village Gerwani, Raigarh (Chhattisgarh),

out of which 4.5 MW is generated through waste heat. It is connected to the 132 kV/220 kV Raigarh sub-station through 132 kV dedicated single circuit line for evacuation of power and has been permitted to operate its power plant in parallel with the Respondent No. 1/CSPDCL's system. The said Appeals have been filed against the orders dated 29.10.2014 of the State Commission in Petition Nos. 59 of 2013 (D) & 25 of 2012 (M) for loss of Captive/CGP status for FY 2007-08 & 2009-10 respectively.

c) Appeal No. 248 of 2015 has been filed by M/s SKS Ispat & Power Ltd., a company registered under the Companies Act, 1956 which is engaged in the production of sponge iron, steel billets, structural/re-rolled products and ferro alloys. It has also established a Captive Power Plant of 85 MW capacity out of which 25 MW is generated through Waste Heat Recovery Boiler (WHRB) route, while remaining power is generated through AFBC and Circulating Fluidised Bed Combustion (CFBC) routes. The plant is situated at Village Siltara, Raipur. It is only for the FY 2009-10 that the issue of loss of Captive/CGP status is involved while in all remaining years, SKS Ispat & Power Ltd. has fulfilled the requisite criteria of a CGP. The said Appeal has been filed by it against the Order dated 21.01.2015 of the State Commission in Petition No. 43 of 2011 (D).

d) Appeal No. 249 of 2016 has been filed by M/s Godawari Power & Ispat Ltd., a captive generating company having an

integrated steel plant and a co-located generation facility of 73 MW, out of which 43 MW is generated through WHRB, while remaining 33 MW is generated through AFBC route. The issue of loss of captive status has arisen only in FY 2009-10 while in all remaining years it has fulfilled the requisite criteria of a CGP. The said Appeal has been filed against the order dated 25.07.2016 of the State Commission in Petition Nos. 04 of 2012 (M).

e) Appeal No. 93 of 2015 with IA No. 141 of 2015 has been filed by M/s G R Sponge and Power Ltd. and M/s Shree Nakoda Ispat Ltd. which are having the business of manufacturing of iron and sponge. For the purpose of meeting their power requirements, they have established power plants for captive use and thereby meeting the power requirements of its sponge iron units. M/s G R Sponge and Power Ltd. has established a 8 MW captive power plant and the M/s Shree Nakoda Ispat Ltd. has established a 6 MW WHRB Captive Power Plant, 8 MW WHRN Captive Power Plant and also a 12 MW biomass based Captive Power Plant. The said Appeal has been filed against the common order dated 22.12.2014 of the State Commission in Petition No. 64 of 2013 (D) filed by M/s G R Sponge and Power Ltd. & Petition No. 65 of 2013 (OA) filed by M/s Shree Nakoda Ispat Ltd.

3. The Respondent No. 1, i.e. CSPDCL is one of the successor entity of the erstwhile Chhattisgarh State Electricity Board (CSEB) and is

a distribution licensee responsible for distribution of electricity within its licensed distribution area in the State of Chhattisgarh (CG).

4. The Respondent No. 2 is the State Electricity Regulatory Commission for the State of Chhattisgarh exercising jurisdiction and discharging functions in terms of the Act.

5. Facts of the present Appeals filed by the Generator Group Appellants:

a) The State Commission vide Tariff Order dated 15.06.2005 for the FY 2005-06 fixed the POC for availing "grid support" by CGPs at Rs. 16/- per KVA per month on the installed capacity of the CGP.

b) The State Commission vide order dated 06.02.2006 in Petition No. 17 of 2005 reviewed the rate of POC payable by CGPs and re-fixed the same at Rs. 10/- per KVA per month.

c) On an Appeal filed by aggrieved CGP member, this Tribunal vide judgment dated 12.09.2006 in Appeal No. 99 of 2006 while declining to interfere with the order of the State Commission fixing the POC at Rs. 10/- per KVA per month directed the State Commission to fix the POC on the basis of the datas, materials and scientific inputs relating to parallel operations.

d) In compliance to the aforesaid judgment of this Tribunal, the State Commission took up the task of determination of POC and registered a suo-motu Petition No. 39 of 2006 (M). It appointed a

technical consultant, M/s. Electrical Research & Development Association (ERDA), to study the impact caused due to CGPs which are operating in parallel with the State grid. Based on the report submitted by ERDA, the State Commission vide Order dated 31.12.2008 fixed the POC at Rs. 21 per KVA.

e) The State Commission, vide Common Order dated 23.01.2009 in suo-motu Petition No. 10 of 2008 (M) and Petition No. 11 of 2008 (M), held that in all cases in which a generator is not a captive generation plant, or otherwise has been declared a non-captive generating plant in pursuance of the provision of sub-rule (2) of Rule 3, parallel operation charge shall not be leviable on them.

f) CSPDCL sought the review of the order dated 31.12.2008 for review of the formula for levy of POC. The State Commission vide order dated 13.10.2009 in Review Petition No. 20 of 2009 (M) reviewed the order dated 31.12.2008 in Petition No. 39 of 2006 (M) and held that POC shall be calculated at the rate of Rs. 21/- per KVA per month on the "captive and non-captive load of CGP" which may either be co-located, fed through the grid or through dedicated lines of CGP.

g) Aggrieved by the Common Order dated 23.01.2009 passed by the State Commission, the Respondent No.1/CSPDCL filed appeals bearing Appeal Nos. 119 and 125 of 2009 before this Tribunal. This Tribunal vide judgement dated 09.02.2010 upheld the order of the State Commission dated 23.01.2009.

h) The Respondent No.1/CSPDCL has filed appeals before the Hon'ble Supreme Court against the decision of this Tribunal and the same are pending.

i) CSPDCL raised supplementary bills on the Generator Group Appellants towards CSS on account of loss of Captive/CGP status as per Rule 3 of the Electricity Rules, 2005. While raising the aforesaid demand, the 50% concession granted by the State Commission to WHRB based co-generators in CSS as well as credit for POC already paid by the Generator Group Appellants was not given by the CSPDCL to the Generator Group Appellants.

j) Aggrieved due to the arbitrary and unjustified amount of CSS demanded by the Respondent No.1/CSPDCL in the supplementary bills, without 50% concession and credit of POC, the Generator Group Appellants filed Petitions under Section 86(1)(f) of the Act before the State Commission for adjudication of disputes.

k) The State Commission has passed the Impugned Orders wherein it allowed 50% concession on CSS on WHRB based co-generation plants to be given to the Generator Group Appellants. Further, it has held that the POC collected by the Respondent No.1/CSPDCL from the Generator Group Appellants shall not be adjusted towards CSS to be billed. The State Commission has come to the above conclusion on the premises that the CSS and POC are payable for different purposes and since the industrial load of the Appellant has taken grid support, so it is liable to pay POC.

6. Questions of Law:

The Generator Group Appellants other than M/s G R Sponge & Power Ltd. and M/s Shree Nakoda Ispat Ltd. have raised the following common questions of law in their Appeals:

a) Whether the issue regarding adjustment of POC towards cross-subsidy surcharge to be billed from a generator on account of loss of captive status as per sub-rule (2) of Rule 3 of the Electricity Rules, 2005, has been squarely settled by this Tribunal vide its judgment dated 09.02.2010 in Appeal Nos. 119 and 125 of 2009?

b) Whether as per orders of the State Commission and this Tribunal, POC is liable to be recovered from all power plants irrespective of that fact whether it is a CGP or not?

c) Whether the State Commission while differentiating the purposes for which POC and cross-subsidy surcharge are levied, has taken into consideration that the cross-subsidy surcharge includes the element of recovery of fixed costs that the licensee might have incurred as part of his obligation to supply electricity to that consumer (stranded cost) as per Hon'ble Supreme Court's decision in Sesa Sterlite's Case (Civil Appeal No. 5749 of 2013)?

d) Whether the Appellant is liable to pay POC/ "grid support" charges on its industrial load to the Respondent No.1 when the cross-subsidy surcharge including the element of recovery of fixed costs

that the licensee might have incurred as part of his obligation to supply electricity to that consumer (stranded cost) is also sought to be recovered from the Appellant on the same industrial load for use of the same distribution system?

e) Whether the Impugned Orders are liable to be quashed and set-aside with respect to the findings of the State Commission that the POC already recovered by Respondent No. 1 shall not be adjusted towards the cross-subsidy surcharge to be billed?

M/s G R Sponge & Power Ltd. and M/s Shree Nakoda Ispat Ltd. have raised the following questions of law in Appeal No. 93 of 2015 with IA No. 141 of 2015:

f) Whether in facts and circumstances of the case the Impugned Order is bad in law and liable to be set aside?

g) Whether the State Commission is bound to follow the order dated 31.12.2008 which legislated on the issue of POC?

h) Whether the State Commission could have come to a different finding with respect of levy of POC on Non- Captive Power Plants on the basis of the previous orders dated 15.6.2005, 31.12.2008, 23.1.2009 and 13.10.2009 of the State Commission and without there being any new material placed on record?

i) Whether the levy of POC is in nature of tax and therefore not authorised to be levied on non-captive power plants as per the order dated 31.12.2008?

j) Whether the levy of POC is violative of Article 265 of the Constitution?

k) Whether the State Commission should have followed the order and judgement dated 9.2.2010 passed by this Tribunal?

l) Whether POC are leviable on Non-Captive Power Plants in light of the fact that Tariff Orders of the Hon'ble Commission have levying the charge only on Captive Power Plants?

m) Whether the Hon'ble Commission can now seek to charge even Non-Captive Power Plants a POC when the levy and collection of POC is being done only on Captive Power Plants since 2005-06 and since 2009 in accordance with the orders dated 31.12.2008 and 13.10.2009. This fact is amply demonstrated by the fact that in subsequent tariff orders dated 31.3.2011 (FY 2011-12), 28.04.2012 (FY 2012-13) and 12.7.2013 (FY 2013-14) issued by the State Commission it has been clearly mentioned in the said Tariff Orders that POC are payable by Captive Power Plants as per the Orders dated 31.12.2008 and 13.10.2009?

7. We have heard at length the learned counsel for the rival parties and considered carefully their written submissions, arguments putforth during the hearings etc. Gist of the same is discussed hereunder.

8. The learned counsel for the Generator Group Appellants have made following arguments/submissions for our consideration on the issues raised by it:

a) The issue of adjustment of POC against CSS to be billed to a generator on account of loss of captive status as per sub-rule (2) of Rule 3 of the Electricity Rules 2005, has been settled by this Tribunal vide judgment dated 09.02.2010 in Appeal Nos. 119 and 125 of 2009. This Tribunal in the said decision rendered with respect to the same parties i.e. the State Commission and CSPDCL, has upheld the order of the State Commission dated 23.01.2009 itself and stated that *"Once it is found that the generating plant who claimed as a captive generating plant did not consume 51% of the energy generated by it, it was never a captive generating plant, then the Appellant namely Power Distribution Company Limited cannot claim that they are entitled to collect POC."*

b) The State Commission in its Common Order dated 23.01.2009 did not deliberate in detail regarding the different purposes for which POC and CSS are levied before arriving at a finding that POC has to be adjusted upon loss of captive status. This certainly cannot disturb the clear findings of this Tribunal on the said issue vide its judgment dated 09.02.2010 in Appeal Nos. 119 and 125 of 2009.The Respondent No.1/CSPDCL has filed appeals before Hon'ble Supreme Court against the said judgement of this Tribunal in Appeal Nos. 119 and 125 of 2009. In case the State Commission was aggrieved due to findings of this Tribunal, it too

had the option to challenge the judgement dated 09.02.2010. Now, the State Commission has re-opened the settled issues, albeit basing the same on additional reasons, which cannot be permitted by this Tribunal.

c) This Tribunal vide judgement dated 09.02.2010 in Appeal Nos. 119 and 125 of 2009 has considered and rejected the submission of the Respondent No.1/CSPDCL that POC ought to be paid by the generator as it has already availed the facility of POC and that the subsequent finding that it is not a CGP will not disentitle the Respondent No. 1 to claim POC. Thus, this Tribunal has duly examined the applicability of the POC towards CGPs and found that when a generator is not a CGP, it is not liable to pay POC.

d) The State Commission, in the Tariff Order dated 15.06.2006, 06.02.2006, 31.12.2008 and 13.10.2009 pre-supposes the existence of a CGP for the levy of POC. Nowhere in the said orders it is stated that the POC for availing “grid support” is to be levied on the independent power plants or the regular consumers of the distribution licensee. In the absence of the same, there cannot be any imposition of POC on the independent power plants or the regular consumers of the distribution licensee. Once the Appellant loses its captive status i.e. it becomes an independent power plant and its industrial consumer is deemed as a regular consumer for the purpose of levying CSS, there can be no justification for recovery of any POC. This is supported by the State Commission’s own findings in para 13 of the order dated

13.10.2008 that *"parallel operation charges are not leviable on industrial consumers of the Board."*

e) If a consumer is made to pay both POC & CSS there would be double counting for a part of fixed cost of the distribution licensee. CSS is nothing but a part of (or whole of) the cross subsidy element in the tariff. Therefore cross subsidy on subsidising consumers is nothing but payment to the distribution licensee of that part of the cross subsidy which it loses from subsidised consumers. Any part of average cost of supply paid by a consumer is actually payment towards part of fixed cost of the distribution licensee which includes the cost of its fixed assets. POC is a benefit that CGP derives from 'grid support'. The entire cost of the grid is included in the distribution cost of the distribution licensee which is recovered through average cost of supply. The CGP who has lost its captive status does not draw any power from the grid. Usually its entire consumption is met from its own generation. Hence, by making payment of CSS by a CGP after having lost captive status is actually paying part of the cost of the grid to the distribution licensee. Where then is the occasion for a CGP to pay the POC in addition for 'grid support'.

f) At the end of a financial year, if the entity is declared as non-CGP it is liable to pay CSS from the retrospective date. It would be arbitrary to hold that a non-CGP plant is liable to pay CSS but still qualifies as a CGP for payment of POC. Either an entity is a CGP or is not. It cannot be a CGP for one purpose and non-CGP for another purpose at the same time.

g) Earlier the Aryan case has been applied to Salasar for the purpose of levy of CSS. Hence, it should certainly not be distinguished from Salasar's case for payment of POC additionally. The Salasar case may be treated as per incuriam as earlier Aryan case has been applied to Salasar earlier and the modus operandi of the State Commission is that the CGP status can only be determined ex-post facto after the financial year is over.

h) CSPDCL is seeking to re-agitate the issue of POC and non-CGP despite not having raised this issue in Review Petition which culminated in the order dated 13.10.2009.The contention of the State Commission that the issue of POC and CSS were not considered in detail in the Aryan order is unfortunate as the State Commission in the said order has given a general and sweeping direction to 'all cases' regarding non payment of POC when an entity becomes non-CGP.

i) CSPDCL in its written submissions has expanded the scope much beyond what was argued during the course of proceedings in the matter. The new submissions related to differentiating terms Captive Power Plant (CPP) & CGP and specific & identified services availed by the CPP during the year could not be revised and were never argued before the State Commission.

9. The learned counsel for the Respondent No. 1/CSPDCL has made following arguments/submissions for our consideration on the issues raised in the present Appeals:

a) The Generator Group Appellants have not mentioned the fact that Hon'ble Supreme Court vide order dated 30.07.2010 in C.A. Nos. 4968-4969 of 2010 has stayed the operation of the judgment of this Tribunal dated 09.02.2010 in Appeal Nos. 119 and 125 of 2009 in the following terms;

> *"...............................*
>
> *Until further orders, operation of the impugned order shall remain stayed. However it is made clear that the supply system, as prevalent today, on payment of cross subsidy surcharges, will continue till further orders."*

The contention of the Generators Group Appellants that the issue of adjustment of POC is squarely settled by this Tribunal's judgment dated 09.02.2010 in Appeal Nos. 119 & 125 of 2009 is misconceived and incorrect.

b) The State Commission had never applied its mind and considered the nature of the POC in its earlier order dated 23.01.2009. CSEB was also not heard on this issue. The operation of this Tribunal's judgment dated 09.02.2010 into which the State Commission's order dated 23.01.2009 stood merged has been stayed by the Hon'ble Supreme Court. A detailed and comprehensive study was carried out by the State Commission on the nature and effects of parallel operation and upon which the State Commission had passed orders culminating in the review order dated 13.10.2009 wherein the State Commission necessarily had to consider the

issue as to whether POC were adjustable against CSS afresh in the light of the aforesaid study, and the State Commission did so correctly and justifiably.

c) In case where parallel operation has been sought and availed whereby a captive load is connected to a generating plant intended and claimed to be a captive generating plant operates in parallel with the grid and the load draws power both from the generating plant and the grid. Having availed grid support the parallel operation charges are payable. The mere determination subsequently that the total consumption from the generating plant is less than 51% does not alter the fact that the grid support has been availed and parallel operation charges therefore have been incurred. The comparison with independent power plant and/or regular consumers is misconceived as the question of parallel operation for supply to connected loads does not at all arise.

d) According to Generator Group Appellants 50% CSS paid by them would meet part of Average Cost of Supply (ACOS) not recovered from subsidized consumer. This is only in respect of the cost of supply to the subsidized consumer and nothing else. The Generator Group Appellants does not bear directly their own share of cost of utilization of CSPDCL's grid infrastructure and power resource for availing grid support by parallel operation. The CSS is not for meeting any recovery of stranded fixed cost arising from the obligation to supply as contended. No element of fixed costs that

may be incurred in view of the obligation to extend supply is included in the CSS as contended. There is no question of any fixed cost compensation from payment of CSS. It is reiterated that the POC are for a distinct and separate facility availed and utilised by the Generator Group Appellants. The State Commission has correctly held in the Impugned Orders that the CSS and the POC to be paid are for different purposes.

e) The contention suggesting that, the Generator Group Appellants become regular consumers of the distribution licensee on loss of captive status in respect of the energy consumed from the CGP is incorrect. The CSS is payable because the Generator Group Appellants have admittedly consumed energy from a source other than the distribution licensee and the generating plant has not qualified as a captive generating plant.

f) The Impugned Orders are not liable to be quashed and/or set aside and there is no reason for the Respondent No. 1 to be directed to adjust the parallel operation charges already recovered towards cross subsidy surcharge to be billed as contended or otherwise. The State Commission has dealt the issue in detail and correctly held that the CSS and POC are to be paid for different purposes and that POC collected should not be adjusted with the CSS.

g) Section 20 of the General Clauses Act can be applied only if the exact term is used but not otherwise. It has no application because

the term is CPP as used and referred in the order and not CGP as defined in the Act.

h) The facilities allowed and provided by CSPDCL cannot be reversed. Availment of start up power, sale of firm/infirm power, benefit of reactive energy and benefit of parallel operation cannot be reversed. An industry setting up power plant to generate power for its own use and if such industry actually avails parallel operation with the grid , then POC as per order applies irreversibly. The order recognizes POC as ‘ grid support charges’.

i) The State Commission, on the issue of levy of CSS and POC simultaneously has dealt the issue in detail in its Order dated 31.12.2008 and review order dated 31.10.2009 after considering ERDA report. In matters relating to science, technology and engineering the principles of precedent as may apply to legal issues would not be applicable.

j) The revenue recovered under POC is considered as CSPDCL’s revenue during true up of its ARR which would be reduced to that extent resulting in reduction of tariff of all consumers. The Generator Group Appellant’s, in this manner pay their fair share for use of the CSPDCL’s infrastructure and resources and the amount is distributed to the benefit of all consumers through true-up of the ARR and consequent tariff determinations. There is no double counting in the hands of CSPDCL as alleged.

k) The reliance of the Generator Group Appellant's on Chamundi Mopeds case is incorrect and does not relate to the present case.

10. The learned counsel for the State Commission has made following arguments/submissions for our consideration on the issues raised in the present Appeals:

a) The nature and purpose of POC and CSS are different. CSS is for compensation to CSPDCL for loss of cross subsidy due to consumer moving out of its net. POC is for providing grid support to the industrial load of CGP.

b) After enjoying the services for operating its load in parallel with the grid, the Generator Group Appellants need to pay for such grid support. The status of CGP/non-CGP is known only at the end of the financial year. This will not effect the requirement to pay POC.

c) The judgement of this Tribunal in case of M/s Aryan was rendered in context of the order dated 23.1.2009 of the State Commission. In Aryan case the State Commission took a view that the plant would pay CSS as POC was not to be paid by non CGP. The State Commission did not examine the matter in detail in terms of nature of POC and CSS. This order was upheld by this Tribunal which has been challenged before Hon'ble Supreme Court and is pending.

d) After examining the issue in detail the State Commission vide order dated 23.12.2014 held that POC and CSS cannot be adjusted against each other. The same was upheld by this Tribunal vide its judgement in Appeal No. 72 of 2015. This Tribunal was very well aware of the Aryan Case in the said judgement.

e) POC is levied for the purpose of grid support and for causing pollutants into the grid such as harmonics, disturbances etc. It is not recovery of ACOS. It is a measurement or a representation in monetary terms of the loss/ damage caused by the operation of the industrial load in parallel with the grid. The purpose of CSS is well known for compensation to CSPDCL. As such there is no double recovery as contended by the Generator Group Appellants. CSS is determined by a formula of NTP-one of its components is tariff. This does not mean a part of ACOS is recovered being part of tariff.

B. Licensee Group:

APPEAL NOS. 294, 295 of 2014, 248 of 2014 WITH IA NO. 407 OF 2014, 249 OF 2014 WITH IA NO. 408 OF 2014 & APPEAL NOS. 05, 35, 36, 37, 38, 39, 40, 262, 249 OF 2015 & APPEAL NO. 265 OF 2016 WITH IA NO. 553 OF 2016

1. The above Appeals are being filed by Chhattisgarh State Power Distribution Co. Ltd.(hereinafter referred to as the **"Licensee Appellant/CSPDCL"**) under Section 111 of the Electricity Act, 2003 challenging various Orders (**"Impugned Orders"**) passed by the State Commission (Respondent No.1 in these set of Appeals).

Various CGPs are the 2nd Respondent (hereinafter collectively referred to as "**Generator Group Respondents**") to these Appeals. These Appeals are related to the State Commission's decision considering the generation from waste heat as co-generation, determination of rate of 50% of the normal rate of CSS for the consumption from power generated from waste heat and segregation and quantification of generation from waste heat and other sources and apportionment of generation towards consumption and export sale of energy.

2. The Respondent No. 1 is the State Electricity Regulatory Commission for the State of Chhattisgarh exercising jurisdiction and discharging functions in terms of the Act.

3. The details of the Respondent No.2, Impugned Orders of the State Commission in various Petitions filed before the State Commission pertaining to different Appeals filed by Licensee Appellant are given below. For the sake of brevity, details of the generators already provided at S. No. A. 2. above are not repeated.

   a) Appeal No. 294 of 2014, Appeal No. 295 of 2014, 248 of 2014 with IA No. 407 of 2014, Appeal No. 249 of 2014 with IA No. 408 of 2014 & Appeal No. 5 of 2015- The Respondent No. 2 is M/s Salasar Steel & Power Ltd. These Appeals are against the State Commission's orders dated 29.10.2014, 29.10.2014, 10.9.2014, 10.9.2014 & 21.11.2014 in Petition Nos. 25 of 2012 (M), 59 of 2013 (D), 36 of 2013 (D), 31 of 2013 (D) & 56 of 2013 (D) respectively.

b) Appeal No. 35 of 2015- The Respondent No.2 is Bhagwati Power & Steel Ltd. which is a company registered under the Companies Act, 1956 and has an operational power generating unit of 10 MW along with manufacturing unit at Raipur. It is engaged in manufacturing of sponge iron. This Appeal is against the State Commission's order dated 29.11.2014 in Petition No. 37 of 2013 (D).

c) Appeal No. 36 of 2015- The Respondent No. 2 is M/s Gopal Sponge & Power (P) Ltd. a company registered under the Companies Act, 1956 and is running a steel plant. It is meeting its electricity requirement from WHRB power plant of 5 MW, which is a co-generation power plant. This Appeal is against the State Commission's order dated 4.12.2014 in Petition No. 49 of 2013 (D).

d) Appeal No. 37 of 2015, Appeal No. 38 of 2015 and Appeal No. 262 of 2015-The Respondent No. 2 is M/s API Ispat & Powertech (P) Ltd. These Appeals are against State Commission's orders dated 29.11.2014, 22.12.2014 & 20.08.2015 in Petition Nos. 54 of 2013 (D), 69 of 2013 (D) & 39 of 2011 (D) respectively.

e) Appeal No. 39 of 2015- The Respondent No. 2 is M/s G.R. Sponge & Power Ltd. This Appeal is against the State Commission's order dated 22.12.2014 in Petition No. 64 of 2013 (D).

f) Appeal No. 40 of 2015- The Respondent No. 2 is M/s Shree Nakoda Ispat Ltd. This Appeal is against the State Commission's order dated 22.12.2014 in Petition No. 65 of 2013 (OA).

g) Appeal No. 249 of 2015- The Respondent No. 2 is M/s S.K.S. Ispat & Power Ltd. This Appeal is against the State Commission's order dated 20.08.2015 in Petition No. 43 of 2011 (D).

h) Appeal No. 265 of 2016 with IA No. 553 of 2016- M/s Godawari Power & Ispat Ltd. This Appeal is against the State Commission's order dated 25.7.2016 in Petition No. 4 of 2012 (M).

4. Facts of the present Appeals filed by the Licensee Appellant:

For the sake of brevity common facts already provided at Generators Group at S. No. A above are not repeated. Additional facts in the present Appeals filed by the Licensee Appellant are as below:

a) The Generator Group Respondents lost their CGP status as they were not able to consume more than 51% of the energy in a particular financial year. Accordingly, the Licensee Appellant raised bills on the Generator Respondents for payment of CSS.

b) The Generator Group Respondents' aggrieved by the said bills filed various petitions as brought out at S.No. B. 3. above before the State Commission disputing the bills raised by the Licensee Appellant.

c) The State Commission issued the Impugned Orders as brought out at S. No. B. 3. above against the said petitions and has held that Generator Group Respondents are liable to pay CSS for electricity consumed from its own power plant on losing its Captive/CGP status and irrespective of the fact that it has not utilised the lines of the Licensee Appellant, considered the generation from waste heat as co-generation, determined a rate of 50% of the normal rate of CSS for the consumption of power generated from waste heat and POC collected by Licensee Appellant should not be adjusted with CSS.

5. Aggrieved by the Impugned Orders passed by the State Commission the Licensee Appellant has filed the present Appeals before this Tribunal on the following issues:

(a) The legality and correctness of considering the generation of power from the Generator Group Respondents' waste heat recovery boiler as a co-generation plant, and consequently and otherwise.

(b) The legality and correctness of the State Commission applying only 50% of the normal rate of cross subsidy

surcharge on the power generated and consumed from the waste heat recovery boiler contrary to the Regulations.

(c) Segregation and quantification of generation from waste heat and other sources and apportionment of generation towards consumption and export sale of energy.

6. Questions of Law

The Licensee Appellant has raised the following questions of law in the present Appeals.

a) Whether, in the facts and circumstances of the case, the Impugned Orders passed in the said Petitions is not erroneous, unjustified, contrary to law and unsustainable insofar as the State Commission has considered the generation from waste heat as co-generation and insofar as the State Commission has determined a rate of 50% of the normal rate of cross subsidy surcharge for the consumption from power generation from waste heat?

b) Whether, in the facts and circumstances of the case, the State Commission was incorrect and/or unjustified in considering the generation of power from waste heat as co-generation; and whether such generation is clearly not co-generation within the definition in Section 2(12) of the Electricity Act, 2003?

c) Whether, in the facts and circumstances of the case, the State Commission was not incorrect and/or unjustified in allowing 50% concession to consumption from generation from waste heat contrary to applicable Regulation and Tariff Order for the applicable Financial Year?

d) Whether, in the facts and circumstances of the case, the generation from the power plant cannot be allocated to the two boilers and whether the entire consumption ought not to be subject to cross subsidy surcharge?

e) Whether, in the facts and circumstances of the case, the State Commission was not incorrect and unjustified in going into and deciding the issue of whether or not any concessional rate of cross subsidy surcharge was to be allowed when there was no prayer, pleading or hearing on the issue?

f) Whether, in the facts and circumstances of the case, the State Commission was not incorrect and unjustified in directing the Licensee Appellant to implement the clarifications in the Impugned Order without passing any order on the maintainability / admissibility and without hearing the Licensee Appellant on the merits?

g) Whether the State Commission's interim orders dated 01.07.201 and 11.9.2013 were not justified and contrary to law and violative of the principles of natural justice; and whether the State Commission's order dated 7.2.2014 dismissing the

application to recall the order dated 11.9.2013 was not justified and contrary to law?

7. We have heard at length the learned counsel for the rival parties and considered carefully their written submissions, arguments putforth during the hearings etc. Gist of the same is discussed hereunder.

8. The learned counsel for the Licensee Appellant has made following arguments/submissions for our consideration on the issues raised by it:

a) The Impugned Orders passed by the State Commission are erroneous, unjustified, contrary to law and unsustainable as the State Commission has considered the generation from waste heat as co-generation and the State Commission has determined a rate of 50% of the normal rate of CSS for the consumption from power generated from waste heat.

b) The State Commission has erroneously considered that the power plants established by the Generator Group Respondents as co-generation plants because they generate power using the heat generated during the manufacturing process of sponge iron etc. and thereby undertake optimum utilization of scarce resources. The State Commission has misdirected itself with regard to the essential requirements and criteria for a power plant to be considered as a co-generation plant and has considered irrelevant aspects.

c) The State Commission failed to see that the generation was from waste heat and that there was no other form of useful energy other than electricity produced. The State Commission ought to have seen that co-generation is defined in Section 2(12) of the Act as *"a process which simultaneously produces two or more forms of useful energy (including electricity)".* As generation from waste heat does not produce any other form of useful energy other than electricity and therefore such generation cannot be considered as co-generation. As defined in Section 2 (12) of the Act, the essential condition for co-generation is that in addition to generation of electricity at least one other form of useful energy is to be generated simultaneously. The other form of useful energy could be useful steam, shaft (mechanical) power etc. In case of sponge iron industries the waste heat recovered through WHRB produces only electricity and hence does not fall under definition of co-generation.

d) The State Commission erred in holding that the consumption from co-generation plants is to be charged at 50% of the normal rate of CSS. Clause 11(6)(b)(ii) of the Chhattisgarh State Electricity Regulatory Commission (Inter-State Open Access in Chhattisgarh) Regulations, 2005 as amended by the First Amendment Regulations of 2007, applicable for the FY 2007-08 up to 2010-11, provides as follows;

"(ii) Such surcharge shall be based on the current level of cross subsidy of the tariff category / tariff slab and / or voltage level to which such open access customers, belong or are connected to, as the case may be. It is to be calculated based on the difference between the applicable tariff rate to the consumer category concerned if the electricity is supplied by the distribution licensee and the cost to the licensee for such supply.

Provided that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant, in respect of his captive generation, for carrying the electricity to a destination of his own use."

Clause 33(6)(b)(ii) of the Chhattisgarh State Electricity Regulatory Commission (Connectivity and Inter-State Open Access) Regulations, 2011, applicable from the FY 2011-12 onwards provides as follows;

"(ii) Cross subsidy surcharge shall also be payable by such consumer who receive supply of electricity from a person other than the distribution licensee in whose area supply is located, irrespective of whether it avails such supply through transmission/ distribution network of the licensee or not."

The 50% concession is available only to consumption from renewable energy sources under clause 33 (6) (b) (v) which reads as follows:

"(v) For consumers procuring power through renewable energy based power generating plant, the cross subsidy surcharge shall be 50% of the cross subsidy surcharge determined for that year.

Illustration: Suppose the cross subsidy surcharge worked out for 2011-12 is 75 paise per kWh and the cross subsidy surcharge worked out for 2012-13 is 70 paise per kWh. For consumers procuring power through renewable energy based power generating stations, the cross subsidy surcharge shall be 38 paise per unit and 35 paise per unit for the year 2011-12 and 2012-13 respectively."

e) The State Commission failed to see and notice that the CSS is payable at the rate determined in the tariff order for the year depending on the consumer category and there is no provision for any concessional rate for consumption from co-generation. The State Commission could not now allow or provide a concessional rate with retrospective effect or on a case-to-case basis in individual cases.

f) The State Commission erred in referring to the State Commission's order dated 27.11.2008 which was for the FY 2006-07 and at that time there was no specific Regulation. The said order is sub-juidice as the appeal arising there from is pending before the Hon'ble Supreme Court.

g) The State Commission erred in misconstruing the judgment dated 26.04.2010 of this Tribunal in Appeal No. 57 of 2009. That appeal was in relation to the issue as to whether the fastening of an obligation on a co-generator to procure electricity from renewable energy sources. The issue in that case was different and the observations in that case must necessarily be seen in the context of the issue in that case.

h) The State Commission has likewise misconstrued the judgment of this Tribunal dated 30.01.2013 in Appeal No. 54 of 2012. That case also was with regard to the obligation to purchase electricity from renewable sources.

i) Neither of the two cases was concerned with the levy of cross subsidy surcharge and/or any concessional treatment of co-generation with respect to consumption from co-generation sources.

j) The State Commission vide order dated 21.05.2013 in Petition No. 28 of 2012 and 7 of 2013 which was also in respect of Renewable Power Purchase Obligation (RPPO) and had nothing to do with the levy of CSS on consumption from co-generation.

k) The State Commission grievously erred in reasoning that merely because the State Commission has been promoting consumption from co-generation power with respect to RPPO obligations, accordingly CSS would be 50% of the normal rate.

The reasoning of the State Commissioning is irrational and unreasonable.

l) The State Commission has erred in considering any concessional rate at which CSS would be levied in instant cases as there were no pleadings/hearing on the issue. This is violative of natural justice and contrary to law.

m) The State Commission failed to consider the configuration of the power plant and the practicality of ascertaining with reasonable certainty the generation from the waste heat and the generation from other boilers. The State Commission failed to differentiate between production of steam from different boilers and the generation of electricity. The apportioning of the generation from the two steam sources is not possible. The ascertainment of which part of the electricity generated from the different steam sources is sold to the licensee and which part is consumed cannot be established.

n) There is no obligation at present for the Licensee Appellant to develop any mechanism in terms of this Tribunal's judgement dated 28.4.2010 which has been stayed by Hon'ble Supreme Court. The case of the Licensee Appellant is that it is not possible for it to work out a formula/ method for apportionment and/ or implement it. It is only the Generator Group Respondents that can establish how much power was generated from WHRB or other boilers and how much of each

was disposed in what manner. The onus must lie on the Generator Group Respondents.

o) The judgement dated 28.4.2010 of this Tribunal in Appeal Nos. 32, 33 & 118 did not decide the issue whether or not generation of electricity from waste heat is co-generation within the definition of the Act. Further, the operation of the said judgement of this Tribunal has been stayed by Hon'ble Supreme Court.

p) The reliance of the State Commission on the resolution dated 6.11.1996 issued by Ministry of Power regarding policy for promotion of co-generation power plants is also misplaced as it was issued much earlier than coming into force of the Act. The Act specifically defined co-generation and that alone can be a lawful basis for determination of power plant as co-generation. Even in terms of the policy of Ministry of Power which also stipulates simultaneous production of two or more forms of useful energy the power plants of Generator Group Respondents cannot be termed as co-generation plants.

q) The State Commission has erred in reasoning that merely the State Commission is promoting co-generation power with respect to RPPO obligations, the CSS would be 50% of normal rate. This reasoning of the State Commission is irrational and unreasonable. The contention of the Generator Group Respondents that the State Commission can make any order on case to case basis or otherwise giving concessions in

applicable rate of CSS because there is no express provision in the Regulations from doing so. The same has also been argued by the State Commission. These contentions are misconceived and erroneous as there are specific provisions in the Regulations 2007/2011 for payment of CSS by every consumer who receive supply from source other than a distribution licensee. The only exception is in Regulations, 2011 which allows concession to energy from renewable sources. The State Commission is bound by its own regulations as held by the Constitution Bench of Hon'ble Supreme Court in PTC case.

r) The contention of the Generator Group Respondent, Salasar, that the Licensee Appellant has no grievance is absurd. The Licensee Appellant has the duty, commercial interest and public responsibility to provide all its consumers with supply and services. The basis of CSS as also stated by Hon'ble Supreme Court in case of Sesa Sterlite, is to compensate the licensee and the licensee always has the legitimate cause for grievance if such compensation is disallowed or abridged.

9. The learned counsel for the Generator Group Respondents has made following arguments/submissions for our consideration on the issues raised in the present Appeals:

a) The issue of treatment of generation of power from WHRBs as co-generation has been squarely decided by this Tribunal vide judgment dated 28.04.2010 in Appeal Nos. 32, 33 & 118 of 2009 in case of Chhattisgarh State Power Distribution Co. Ltd.

Vs. Salasar Steel and Power Ltd. & Ors. involving the same parties as in the instant Appeals. The Appellant is once again seeking to re-open the issues that have already been settled and decided by this Tribunal in Generator Group Respondent's favour. The same cannot be permitted at this stage.

b) The power plants in question, being generators of electricity based on waste heat, were recognized as co-generation and concession of 50% on CSS was extended by the State Commission vide its order dated 27.11.2008 in suo-motu petitions No. 14 and 15 of 2008 (M).

c) In the appeals filed by the Licensee Appellant before this Tribunal being Appeal Nos. 32, 33 & 118 of 2009 against the Common Order dated 27.11.2008, this Tribunal vide its judgment dated 28.04.2010 has confirmed the aforesaid findings of the State Commission.

d) Both the State Commission as well as this Tribunal, have considered the issue of generation of power from WHRBs set-up by sponge iron plants as co-generation in great detail. This has been done after referring to and relying upon the various communications between the State Commission, Ministry of Power, Ministry of New and Renewable Energy, the Central Electricity Authority and the Forum of Regulators (FOR). This Tribunal has confirmed the findings of the State Commission that the Generator Group Respondents' are sponge iron waste heat based co-generators and thus entitled to receive 50%

concession on the normal rate of CSS. Hence, it is clear that the Appellant is seeking to re-open the decided issues.

e) Aggrieved due to the aforesaid judgment dated 28.04.2010 passed by this Tribunal, the Licensee Appellant has already filed Civil Appeal No. 5683 of 2010 before the Hon'ble Supreme Court of India. In the said civil appeal, the Appellant has disputed the findings of this Tribunal with respect to treatment of power generated from waste heat as co-generation and applicability of 50% concession on CSS. The said civil appeal is presently pending with the Hon'ble Supreme Court of India. However, vide Order dated 02.08.2010, the Hon'ble Supreme Court has been pleased to grant stay of the operation of the judgment dated 28.04.2010.

f) Further, it is important to note that the Chhattisgarh Sponge Iron Manufacturers Association, representing 92 members, including the Generator Group Respondents, that have set-up sponge iron plants in the State of Chhattisgarh and engaged in production of sponge iron and generation of power through WHRBs, had earlier filed a petition before the State Commission against the Licensee Appellant and other distribution licensees in the State of Chhattisgarh, being Petition No. 28 of 2012 (N), wherein, the sponge iron plants sought exemption from the State Commission from the Renewable Power Purchase Obligations ("RPPO") under Section 86(1)(e) of the Electricity Act, 2003 on the grounds that they are waste heat based co-generators. Vide Order dated 21.05.2013, the

State Commission allowed the petition filed by the Association and accepted the contention of the sponge iron waste heat based power plants that they are co-generators and further exempted such co-generators from the RPPOs. The State Commission further directed that a Committee be constituted which would study all the aspects regarding generation, consumption and metering of co-generation power. This order has never been challenged by any party and has therefore become final.

g) Even in the past, this Tribunal has recognized co-generation plants based on fuels even other than bagasse/biomass. In the case of M/s. Hi Tech Carbon Vs. UPERC &Ors. (Appeal No. 93 of 2013, decided on 02.04.2014), this Tribunal accepted the contention of the generator that it is a Waste Heat Recovery based power plant which is a co-generation plant and is based on fuels even other than biomass and bagasse.

h) With regard to the second issue, the Licensee Appellant has contended that the 50% concession could not have been granted by the State Commission to the waste heat based co-generators, since the CERC (Connectivity & Intra-state Open Access) Regulations, 2011 do not provide for the same. In other words, the said Regulations are silent on the aspect of 50% concession to the co-generators.

i) The Regulations have been framed by the State Commission in exercise of delegated legislative powers under Sections

39(2)(d), 40(c), 42(2,3), 86(1)(c) read with 181(2)(1) of the Electricity Act, 2003. Normally, once the Regulations have been framed, the same binds all entities including the State Commission and the State Commission can neither amend nor supersede the statutory rules by administrative instructions or judicial orders. However, if the rules or regulations are silent on any particular point or aspect, the State Commission can fill up the gaps and supplement the regulations and issue orders not inconsistent with the regulations already framed. The concession of 50% in CSS if granted by the State Commission by way of a judicial order, as in the instant case, does not have the effect of altering or amending the Regulations as the said Regulations only provide for imposition of CSS, but are silent on the aspect of rate of such CSS on co-generators. In this regard the Generator Group Respondents have relied upon the Hon'ble Supreme Court judgement in respect of the scope of executive orders vis-a-vis expansion of rules framed under Article 309 of the Constitution of India i.e. delegated legislation, in the case of O.P. Lather and Ors. etc. v. Satish Kumar Kakkar and Ors. (AIR 2001 SC 821).

j) The State Commission, by way of the Impugned Orders has merely exercised its judicial functions and further clarified regarding the applicability of the 50% concession to waste heat based co-generators, which has to be read as supplemental to the Regulations and not contrary to the same. There is no illegality in the same which is in line with its mandate to promote co-generation sources as well as its previous decisions on the

subject. On the other hand, it would be most anomalous in case the Generator Group Respondents are treated as a waste heat based co-generator for a particular financial year and given the 50% concession as has been done in the past, while for the subsequent years it is not treated as a co-generator and denied the 50% concession, though nothing has changed with respect to the configuration and specifications of the power plant of the Generator Group Respondents.

k) The Licensee Appellant has raised certain other grounds regarding difficulty in the apportionment of generation of electricity and consumption from the waste heat boilers. The State Commission vide its Order dated 27.11.2008 had specifically directed that the Licensee Appellant *"shall ensure installation of suitable meter to ascertain the power consumption by the industry at the consuming end. On the basis of such consumption cross-subsidy surcharge shall be payable to the Board, every month, final adjustment being made at the end of the financial year."* In fact the State Commission vide its Order dated 21.05.2013 in Petition No. 28 of 2012 (M) also directed that a Committee be constituted which would study all the aspects regarding generation, consumption and metering of co-generation power. However, neither has the Licensee Appellant taken any steps to install such meters, nor has any Committee submitted any such report. In such circumstances, it is not at all open for the Appellant to make wild and baseless allegations regarding the so-called difficulty in

apportionment of the generation and consumption from waste heat recovery boilers of the co-generators.

l) There is no infirmity in the Impugned Orders of the State Commission allowing the 50% concession in CSS to waste heat based co-generators such as the Generator Group Respondents and therefore no occasion arises warranting any interference by this Tribunal in the Impugned Orders passed by the State Commission on that account.

m) The issue related to stay of an order has been dealt by Hon'ble Supreme Court in Chamundi Moped Case (1992) 2 SCR 999. The issue of co-generation has been dealt in detail by this Tribunal in its judgement dated 26.4.2010 in case of Century Rayon.

n) The co-generation of power plant of the Generator Group Respondents satisfy the conditions contained in the definition of co-generation of the Act. There are two useful form of energy generated in the process. This can be simultaneous. The co-generation plant, electrical energy is sequential to another form of energy. The waste heat in the first process is usefully utilized for power generation instead of wasting it to atmosphere.

o) The Central Electricity Regulatory Commission (CERC) in CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2009 under Regulation 2 (o) recognises the sequential manner of

production of two useful form of energy. The same is also recognized by CERC in its CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 under Regulation 2 (r).

p) On the issue of 50% concession in CSS, the Generator Respondents have relied on the judgements of Hon'ble Supreme Court in case of Suresh Jindal Vs BSES Rajdhani Power Ltd. (2008) Vol-1 SCC 341, PTC India Ltd. Vs. CERC (2010) 3 SCR, 609 and M/s Southern Technologies Ltd. Vs. Joint Commissioner of Income Tax, Coimbatore reported in 2010 (1) SCALE 329. According to these judgements, in absence of any prohibition in the Regulation, the State Commission was well within the right to give promotion measure to co-generation under Section 86 (1) (e) of the Act.

q) On the issue of apportionment of electricity generated by WHRB and other boilers the Generator Group Respondents relied on the judgements of Hon'ble Supreme Court in case of Union of India Vs. Major General Madan Lal Yadav 1996 (4) SCC, B M Malani Vs. Commissioner of Income tax and Anr. 2008 (10) SCC, Kushweshwar Prasad Singh Vs. State of Bihar (2007) 11 SCC, Nirmala Anand Vs. Advent Corporation (P) Ltd. (2002) 5 SCC 481, Ashok Kapil Vs. Sana Ullah (1996) 6 SCC 342, Eureka Forbes Vs. Allahabad Bank (2010) 6 SCC 193 and PanchananDhara Vs. MonmathaNath Maity (Dead) through LRs. (2006) 5 SCC 340.

r) It is also well settled that the difficulties in apportionment cannot be a ground for denying the benefit. The Generator Group Respondents on this issue relied on the judgements of Hon'ble Supreme Court in case of Commissioner of Income Tax, Madras Vs. M/s Best & Co. and Dossibai Nanabhoy Jeejeebhoy Vs. P M Bharucha (1958) 60 BOMLR 1208.

s) The Licensee Appellant is not an aggrieved party. The 50% concession in CSS in favour of co-generation has not caused any prejudice to the Licensee Appellant. The term 'aggrieved person' has been well defined in the judgment of Hon'ble Supreme Court in case of Gopalbandhu Biswal Vs. Krishna Chandra Mohanty & Ors. reported in (1998) 4 SCC 447 and was also followed in case of Grid Corporation of Orissa Vs Gajendra Haldea & Ors. 2008 (13) SCC 414.

10. The learned counsel for the State Commission has made following arguments/submissions for our consideration on the issues raised in the present Appeals:

a) The issue, whether waste heat recovery is a co-generation was not raised by the Licensee Appellant before the State Commission. Accordingly, the State Commission in the Impugned Orders has not given any findings on the same. Co-generation as defined in the Act does not mean that exact at the same time, two forms of useful energy should be produced. The Ministry of Power policy also describes co-generation plants as *"Bottoming Cycle: Any*

facility that uses waste industrial heat for power generation by supplementary heat from any fossil fuel."

b) This Tribunal vide judgement dated 28.4.2010 in Appeal Nos. 32, 33 & 118 of 2009 has clearly decided that WHRB based sponge iron plants are co-generation plants. The contention of the Licensee Appellant that the said judgement was with regard to FY 2006-07 is not tenable as the process of co-generation is not dependent upon time and the decision is for all times. The Licensee Appellant is trying to re-open the issue already settled.

c) The State Commission vide order dated 21.5.2013 allowed the petition no. 28 of 2012 (M) filed by the Chhattisgarh sponge iron manufacturers association in which exemption was sought for sponge iron plants from RPPO on the grounds that they are waste heat based co-generators. The Licensee Appellant had not filed any appeal against the said order of the State Commission. The State Commission is justified in treating the plants of Generator Group Respondents as co-generation.

d) On the issue of benefit of 50% CSS, the Licensee Appellant is simply relying on the Regulations, 2011 which uses the word 'renewable energy' and is pleading that the same is not applicable to WHRB based co-generation plants by an order. The 50% concession on CSS has been granted by the State Commission by way of a judicial order and this does not have the effect of amending the Regulations as the said Regulations only provide for

levy of CSS but are silent on the aspect of rate of such CSS on co-generation.

e) Hon'ble Supreme Court in the PTC case has held that the State Commission while passing an order must adhere to its Regulation. In the instant case the Regulations do not discuss the rate of CSS on co-generation. Accordingly, the State Commission was justified in deciding 50% CSS in view of the legislative mandate to promote co-generation under Section 86 (1) (e) of the Act. The Impugned Orders are not inconsistent with any provision of the Act or Regulations. If co-generation plants were to be charged at full rate of CSS, it would have defeated the purpose of the Act.

f) The State Commission has also taken full care of the Licensee Appellant by holding that no concession in CSS will be available in case power is generated using other boilers which have been installed by the Generator Group Respondents for optimization of their generating capacity. This Tribunal vide judgement dated 28.4.2010 in Appeal Nos. 32, 33 & 118 of 2009 has also upheld the decision regarding levy of 50% CSS on co-generation plants when they do not qualify as CPP.

C. After having a careful examination of all the issues raised in the present Appeals (both the Generator Group Appellants and the Licensee Appellant) and submissions made by the Generator Group Appellants/ the Licensee Appellant and the corresponding Respondents for our consideration, our observations are as follows:-

1. After hearing the rival parties and with their consent the questions of law can be limited to only five issues which arise out of all the present Appeals. These issues are:

   a. Whether POC could be levied on the Generator Group Appellants, when it was not a captive generator for the period in question?

   b. Whether CGP is entitled for adjustment of POC with CSS when it is found that it is not a captive generator as per Sub Rule (2) of Rule 3 of Electricity Rules, 2005 at the end of financial year?

   c. Whether the Stations of the Generator Group Appellants can be considered as co-generation station?

   d. Whether 50% concession in CSS can be allowed to waste heat based co-generators?

   e. How to segregate generation from co-generation and other sources. Who and where to install the meters?

2. First two issues are interconnected with one issue in common i.e. levy and payment of POC when the CGP loses its captive status and the other issue is regarding whether POC is to be adjusted with CSS when CGP loses its captive status in a particular year. These are the only two main issues of the Generator Group Appellants. Hence we are taking both the questions together. On

the first issue i.e. Whether POC could be levied on the Generator Group Appellants, when it was not a captive generator for the period in question? and on second issue i.e. Whether CGP is entitled for adjustment of POC with CSS when it is found that it is not a captive generator as per Sub Rule (2) of Rule 3 of Electricity Rules, 2005 at the end of financial year?, we observe as below:

i. Let us first analyse the sub-rule 2 of Rule 3 of the Electricity Rules, 2005. The relevant portion is reproduced below:

> *"(2) It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.*
>
> *Explanation.- (1) For the purpose of this rule.-*
> *a. "Annual Basis" shall be determined based on a financial year;*
> *b. "Captive User" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "Captive Use" shall be construed accordingly;*
> *……………………………."*

Sub rule 1 of Rule 3 is reproduced below:

"(1) No power plant shall qualify as a 'captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless-

(a) in case of a power plant –

(i) not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) <u>not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use</u>:

……………………………….

……………………………….

Illustration: In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen percent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users."

From the above, for the purpose of the present Appeals, it can be seen that a plant can be treated as a CGP plant if not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use. In the present Generator

Group Appeals, it is very clear that the Generator Group Appellants were not fulfilling the condition of consumption of fifty one percent as captive consumption of the aggregate electricity generated in their plant on an annual basis for their respective period in question. Accordingly, whether a generator is a captive plant or non-captive plant in a particular financial year could be known only at the end of that financial year.

ii. Now let us examine the applicability of POC and CSS to the CGPs when they lose their captive status in a particular financial year. In this regard it is necessary to analyse the Impugned Orders of the State Commission, earlier judgements of this Tribunal and Regulations of the State Commission.

For the purpose of brevity we are quoting only one sample Impugned Order dated 29.10.2014 in Petition No. 59 of 2013 (D) of the State Commission as the issue is similar in all the other Impugned Orders of the Generator Group Appellants. The relevant extract of one of the Impugned Order 29.10.2014 in Petition No. 59 of 2013 (D) is reproduced below:

"Conclusion

1. <u>Petitioner is liable to pay cross –subsidy surcharge for the electricity consumed (own industrial consumption) from its own power plant, irrespective of the fact that it has not used the lines of licensee for the year 2007-08.</u> Respondent is directed to review the bill dated 14.08.2013

for recovery of cross subsidy surcharge issued in line with judgment in this order.

2. Cross subsidy surcharge will be half of the normal rate for the energy consumed from the co-generation power plant for the year 2007-08. This facility provided on consumption from cogeneration plant will, however, not be available in case of consumption from power generated using the other boilers.

3. Parallel operation charges collected by CSPDCL from petitioner for that year 2007-08 should not be adjusted with the cross subsidy surcharge to be billed."

iii. The contention of the Generator Group Appellants is that the State Commission has erred in holding that POC should not be adjusted with CSS when CGP lost its captive status in a particular financial year. Similar decision has been given by the State Commission in the other Impugned Orders against the Generator Group Appellants. In this regard they relied on the judgement dated 9.2.2010 of this Tribunal in Appeal Nos. 119 & 125 of 2009 wherein the State Commission's order dated 23.1.2009 was upheld. The relevant extract of the said order of the State Commission and judgement of this Tribunal is reproduced below:

Relevant extract from State Commission's order dated 23.1.2009 is reproduced below:

"11. The respondent has also submitted that it has paid parallel operation charges to the Board which he is not liable to pay not being a captive generating plant. Parallel operation charges are levied only on captive generating plants and are not leviable on other generators. In our order regarding parallel operation charges passed on 31.12.2008 in case No. 39 of 2006, it has been reiterated that such charges are applicable only to captive generating station which have their own industrial/commercial load. Since admittedly the respondent in this case [petitioner in case No.11 of 2008(M)] is not a CGP, parallel operation charges are not payable by him. We also direct that in all cases, in which a generator is not a captive generation plant, or otherwise has been declared a non-captive generating plant in pursuance of the provision of sub-rule (2) of Rule 3, parallel operation charge shall not be leviable on them. In the present case if the respondent is paying parallel operation charges, it should be stopped and the charges already paid by the generator so far, be adjusted against the cross subsidy surcharge payable by him to the distribution company being the Board's successor."

The State Commission has clearly brought out in its order that M/s Aryan is not a CGP and hence POC is not payable by it and ordered that POC already paid by it be adjusted against CSS payable by it to the distribution

licensee. Further, the State Commission also held that if a generator is declared a non-captive generating plant in pursuance of the provision of sub-rule (2) of Rule 3, parallel operation charge shall not be levied on them. As discussed at C. 3. i. above, the status of a plant captive or non-captive can be known post facto only after the completion of financial year in question.

Relevant extract from this Tribunal's judgement dated 9.2.2010 in Appeal Nos. 119 & 125 of 2009 is reproduced below:

"33. It has been argued by the learned counsel for the Appellant in Appeal No. 119 of 2009 that the parallel operation charges cannot be directed to be adjusted towards cross subsidy charges since the Aryan Plant had already paid parallel operation charges after having availed of the parallel operation facilities, the subsequent finding that it is not a captive generating plant can not alter the fact that it had used the parallel operation facilities provided by the Distribution Licensee after payment of parallel operation charges and therefore the order ordering for adjustment of parallel operation charges toward cross subsidy charges is wrong. This contention in our view is misconceived. <u>Once it is found out that the generating plant who claimed as a captive generating plant did not consume 51% of the energy generated by it, it was never a captive generating plant,</u>

then the Appellant namely Power Distribution Company Limited cannot claim that they are entitled to collect parallel operation charges. Therefore, the order impugned had been correctly passed by the State Commission holding that the Aryan Plant could never be a captive power plant and therefore, there was no liability to pay parallel operation charges. Consequently, the State Commission held that the charges which were paid earlier as parallel operation charges have to be adjusted as cross subsidy charges for the past use. There is no illegality in this order. Further, no prejudice can be attributed to the Power distribution licensee especially when the amount of cross subsidy surcharge which the power distribution company is entitled to claim is much higher than the parallel operation charges which were paid earlier."

From the above it is clear that M/s Aryan (the generator) could not be a captive power plant and hence it is not liable to pay POC and hence it was ordered that POC if paid by M/s Aryan has to be adjusted against CSS. From the above it is also clear that M/s Aryan was never a CGP nor it could be CGP in future and hence it is not in the category of CGPs.

iv. The distribution licensee has filed an appeal with Hon'ble Supreme Court against the above judgement of this Tribunal. Hon'ble Supreme Court vide order dated 30.7.2010 in C.A. Nos. 4968-4969 of 2010 has stayed the operation of the said

judgement of this Tribunal. Although, operation of the judgement of this Tribunal has been stayed by Hon'ble Supreme Court, the same is yet to be decided. The judgement of this Tribunal remains until it is turned down by Hon'ble Supreme Court.

v. In our considered opinion the present cases are different from that of M/s Aryan as the Generator Group Appellants involved here are actually conceived as CGPs. The question limited to them is that whether POC and CSS are applicable to them when they lose their CGP status in a particular financial year. These issues have been dealt by this Tribunal in detail in the judgement dated 17.2.2016 in Appeal No. 72 of 2015 in case of M/s Salasar Steel & Power Ltd. Vs. Chhattisgarh State Power Distribution Company Ltd. & Anr. The relevant extract from the said judgement is reproduced below:

> *"19. In support of their arguments, the Respondents quoted judgment of the Hon'ble Supreme Court in Civil Appeal No. 5479 of 2013 in the case of M/s. Sesa Sterlite V/s. Orissa Electricity Regulatory Commission & Ors. and relevant portion of the Judgment is reproduced below:-*
>
> *"(2) Open Access and CSS*
>
> *...*
>
> *..*
>
> *..*

28. Therefore, in the aforesaid circumstances though CSS (cross-subsidy surcharge) is payable by the Consumer to the Distribution Licensee of the area in question when it decides not to take supply from that company but to avail it from another distribution licensee. In nutshell, CSS is a compensation to the distribution licensee irrespective of the fact whether its line is used or not, in view of the fact that, but for the open access the consumer would pay tariff applicable for supply which would include an element of cross subsidy surcharge on certain other categories of consumers. What is important is that a consumer situated in an area is bound to contribute to subsidizing a low and consumer if he falls in the category of subsidizing consumer. Once a cross subsidy surcharge is fixed for an area it is liable to be paid and such payment will be used for meeting the current levels of cross subsidy within the area. A fortiorari, even a licensee which purchases electricity for its own consumption either through a "dedicated transmission line" or through "open access" would be liable to pay Cross Subsidy Surcharge under the Act.

Thus, Cross Subsidy Surcharge, broadly speaking, is the charge payable by a consumer

> *who opt to avail power supply through open access from someone other than such Distribution licensee in whose area it is situated. Such surcharge is meant to compensate such Distribution licensee from the loss of cross subsidy that such Distribution licensee would suffer by reason of the consumer taking supply from someone other than such Distribution licensee."*

It is abundantly clear from the above Judgment that the cross subsidy surcharge is payable by the consumer if it has not availed the supply from the Distribution Licensee of the area in question. As such, the Appellant after having failed to qualify as CPP is liable to pay cross subsidy surcharge in addition to POC."

....

....

However, the present Appeal of the Appellant is different on the sole premise that it conceived its generating plant as captive from inception and had been availing the benefits of captive status from beginning and it is only in the period under dispute that it was not considered 'captive plant' since it could not fulfil the criteria of captive consumption of "not less than 51% of the total generation on annualized basis".

(i) It is not open to the Appellant that on its requirement of attaining captive status by meeting the specified criteria which has been granted since the time it was sought, but due to annualized captive consumption being less than that specified for meeting the captive status for some period, it should not be considered captive for that period and POC paid by it for that period should be refunded. This plea of the Appellant is not acceptable since the Respondents' system did take into consideration even during the period under dispute for catering to the requisite grid support to the generating station of the Appellant considering it as captive plant as has been considered for the prior period of operation of the Appellant. As even during the period under dispute, the Appellant's plant has in any case run in parallel with the system of the Respondent No.1, the Appellant is liable to pay POC for period under question to the Respondent No.1.

(j) It is upto the Appellant if it considers that it would not have captive consumption to the specified threshold for meeting captive status in future it could get it generating plant categorized as non-captive generating station and in that case after obtaining the statutory clearance, it would not have to pay parallel operation charges.

However, in the present Appeal, it was only after the captive consumption becoming less than the specified threshold limit for securing captive status after the period has elapsed, the Appellant during the disputed period based on actual consumption of power for captive use is claiming its plant as non captive. Hence, it would not be entitled to the benefit of recovering POC paid by it during the period under dispute.

(k) As regards the issue regarding the recovery of POC as well as cross subsidy surcharge from the same generating source during the same period, we are of the considered opinion that since POC and cross subsidy surcharge are for different reasons, the same could be recovered at the same time if such situation warrants so. In the present case, recovery on account of POC as well as cross subsidy surcharge under the period in question has been rightly done so and the State Commission in the Impugned Order has dealt with all these aspects in the proper perspective in detail and has come to its correct conclusion."

From the above, it is clear that the CGP losing its captive status is known only when the financial year is completed. Till such time POC are being paid and parallel operation benefits are being obtained by the CGP. POC and CSS are for different reasons and the same could be recovered at the same time if such situation arises.

vi. The Generator Group Appellants have also contested that if a consumer is made to pay both POC & CSS there would be double counting for a part of fixed cost of the distribution licensee.

In response, CSPDCL has submitted that a detailed and comprehensive study was carried out by the State Commission on the nature and effects of parallel operation. Accordingly, the State Commission had to consider the issue as to whether POC were adjustable against CSS afresh in the light of the aforesaid study while issuing an order on the same in 2009. CSPDCL, further added that the CSS is not for meeting any recovery of stranded fixed cost arising from the obligation to supply. There is no question of any fixed cost compensation from payment of CSS. The Generator Group Appellants does not bear directly their own share of cost of utilization of CSPDCL's grid infrastructure and power resource for availing grid support by parallel operation. The revenue recovered under POC is considered as CSPDCL's revenue during true up of its ARR which would be reduced to that extent resulting in reduction of tariff of all consumers. It had reiterated that the POC are for a distinct and separate facility availed and utilised by the Generator Group Appellants.

The State Commission has submitted that POC is levied for the purpose of grid support and for causing pollutants into

the grid such as harmonics, disturbances etc. It is not recovery of ACOS. It is a measurement or a representation in monetary terms of the loss/ damage caused by the operation of the industrial load in parallel with the grid. The purpose of CSS is well known and is for compensation to CSPDCL. As such there is no double recovery as contended by the Generator Group Appellants. CSS is determined by a formula of NTP-one of its components is tariff. This does not mean a part of ACOS is recovered being part of tariff.

In order to find the answer to the contention of the Generator Group Appellants let us examine the provisions of CSS in NTP. In this regard let us have a look at the CSS formula stipulated in the National Tariff Policy, 2005. The same is reproduced below:

> *"Surcharge formula:*
> *S = T - [C (1+L/100) + D] Where*
> *S is the surcharge*
> *<u>T is the Tariff payable</u> by the relevant category of consumers;*
> *<u>C is the Weighted average cost of power purchase</u> of top 5% at the margin excluding liquid fuel based generation and renewable power*
> *<u>D is the Wheeling Charge</u>*
> *L is the system Losses for the applicable voltage level, expressed as a percentage".*

From the above, it can be seen that CSS is difference of the tariff payable by relevant category of the consumers and tariff determined by considering weighted average cost of power purchase of top 5% at margin including system losses & wheeling charges (i.e. distribution charges which are nothing but the fixed cost of the distribution system). Accordingly, CSS is derived from the difference of two tariff components. CSS is not termed/ treated as a part of tariff and it has been given a separate identity under the Act/NTP in the form of 'surcharge' as the purpose of levying CSS is entirely different as discussed above. Further, any revenue earned by CSPDCL on account of POC is taken care in the true up of ARR of CSPDCL and the benefits are passed on to the consumers of the State. Accordingly, the contention of the Generator Group Appellants that there is double counting of a part of ACOS in hands of CSPDCL is misplaced.

vii. In view of our discussions as above, the judgement of the Hon'ble Supreme Court in Civil Appeal No. 5479 of 2013 in case of M/s Sesa Sterlite Vs. Orissa Electricity Regulatory Commission & Ors. and finding of this Tribunal as above in Appeal No. 72 of 2015, we are of the considered opinion that Parallel Operation Charges are liable to be recovered from a CGP even if it is rendered as non-captive in a particular financial year along with applicable CSS. Hence we do not find any infirmity in the decision of the State Commission for not adjusting POC with CSS.

viii. Accordingly, both the issues raised by the Generator Group Appellants are decided against them.

3. Now we take next two issues together which are the issues raised by the Licensee Appellant i.e. Whether the Stations of the Generator Group Appellants can be considered as co-generation station? and Whether 50% concession in CSS can be allowed to waste heat based co-generators?, we observe as below:

   i. The issue of treatment of generation of power from waste heat recovery boilers as co-generation and applicability of 50% CSS on such generators have been decided by this Tribunal vide judgment dated 28.04.2010 in Appeal Nos. 32, 33 & 118 of 2009 in case of Chhattisgarh State Power Distribution Co. Ltd. Vs. Salasar Steel and Power Ltd. &Ors. The relevant part of the said judgement is reproduced below:

> *"14. The third issue relates to the payment of 50% of the cross subsidy surcharge. Section 86(1)(e) of the Electricity Act mandates the State Commission to promote co- generation. Let us now quote section 86(1)(e) which reads as under:*
>
> > *"86. Functions of State Commission – (1) The State Commission shall discharge the following functions, namely –*
> > *………*
> > *(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such*

> *sources, a percentage of the total consumption of electricity in the area of a distribution licensee."*

15. So, a reading of the above provision would make it clear that special consideration shall have to be shown to a cogeneration plant in order to ensure that the consumers derive benefits out of this plant. Further, it is noticed from the impugned order that while deciding this issue the State Commission consulted the Ministry of Power, Ministry of New and Renewable Energy and the Central Electricity Authority with regard to this issue. As a matter of fact by letter dated 27.08.08, the State Commission sought clarification from the Ministry of Power as to whether the Sponge & Iron industry can be allowed to use electricity generated through waste heat recovery by paying cross subsidy surcharge. By letter dated 06.09.2008, the State Commission sought a similar clarification from the Ministry of New and Renewable Energy. By the reply dated 22.12.2008, the Ministry of Power forwarded the opinion of the CEA to the State Commission, which states as follows:

> *"6. In the situation described by the CSERC the generating plants set up by the sponge iron industry may be treated as co-generation plants acting as independent power producers, which would be at liberty to use part of their power themselves and sell the surplus power to any entity. For sale of such power it would have to adhere to the grid connectivity standards and safety regulations mandated by the CSERC. In UP, a large number of sugar mills have established cogeneration plants. They themselves are using less than 51% of their total generation. The surplus power is sold to the distribution licensees at tariffs fixed by the UPERC."*

16. Further, by another letter dated 18.08.09, the Ministry of Power gave the following suggestion to the State Commission:

"2. The FOR vide their Letter No. 15.4/2009-GC-MOP/FOR/CERC dated May 12, 2009 has informed that the issue was discussed in the tenth meeting of FOR held in Chennai on January 30, 2009. A presentation was also made by the Chairperson, CSERC in the meeting, relevant extracts of which are as follows: "CSERC has resolved this issue through imposition of cross subsidy surcharge on the electricity consumed by Sponge Iron Plant. A view also emerged that the SERCs could consider making the cross subsidy surcharge zero for cogeneration plant in view of the provisions of section 86(1) of the Act".

17. In the circumstances quoted above, the State Commission has decided to extend the benefit of liability to 50% of the cogeneration carried out by the respondents as in the case of non-conventional energy sources.

18. Further, the State Commission has also taken full care to protect the interest of the distribution licensee, the Appellant herein. The advantage of paying only 50% cross subsidy surcharge will not be available in case the power is generated using other boilers which have been installed by the respondents for optimization of its generation capacity. It will be available to the respondents only when their cogeneration of electricity above the electricity generated by the respondents from the waste heat recovery fuel. Hence, this contention also has no substance and the same is rejected.

19. The next issue is with reference to apportionment of the entire annual generation between cogeneration and non-cogeneration in proportion to the capacity of boilers. The State Commission has directed that the annual

generation of the respondents apportioned between cogeneration and non-cogeneration in proportion to the capacity of the boilers. The State Commission in the impugned order has duly considered the useful power output and came to the conclusion that the useful power output in he year 2006-07 was greater than 50% of the quantity for generation of power. The above determination is only for the year 2006-07 as pointed out by the Learned Counsel for the Commission. In case in the subsequent, year the distribution licensee is able to show that useful power output for cogeneration is less than 50%, the concessional cross subsidy surcharge will not be applicable to the respondents. Therefore, we are unable to accept this contention of the learned counsel for the Appellant on this issue. Hence, this contention also would fail."

From the above, it is clear that while deciding upon the issues in question, this Tribunal has gone into the details of provisions of the Act, considerations taken by the State Commission in respect of clarifications received from Ministry of Power, presentation made by the State Commission at Forum of Regulators (FOR) etc. This Tribunal has upheld the decision of the State Commission in considering sponge iron based plants as co-generation plants and also upheld the levy of only 50% of CSS charges on them when they lose their captive status in a particular year.

ii. Aggrieved by the judgment dated 28.04.2010 passed by this Tribunal, the Licensee Appellant has filed Civil Appeal No. 5683 of 2010 before the Hon'ble Supreme Court of India. In the said civil appeal, the Appellant has disputed the findings of this Tribunal with respect to treatment of power generated from waste heat as co-generation and applicability of 50% concession on CSS. Vide Order dated 02.08.2010, the Hon'ble Supreme Court has stayed of the operation of the judgment dated 28.04.2010. The said civil appeal is presently pending for final adjudication. Till such time the decision of this Tribunal is set aside by the Hon'ble Supreme Court, the decision of this Tribunal holds good.

iii. The Licensee Appellant has questioned the legality and correctness of the State Commission applying only 50% of the normal rate of cross subsidy surcharge on the power generated and consumed from the waste heat recovery boiler contrary to the Regulations.

iv. It has also been argued by the Generator Group Respondents that from the judgement of Hon'ble Supreme Court in case of O.P. Lather and Ors. Etc. v. Satish Kumar Kakkar and Ors. (AIR 2001 SC 821) it can be inferred that if rules or regulations are silent on any particular point or aspect, the State Commission can fill up the gaps and supplement the regulations and issue orders not inconsistent with the regulations already framed. The concession of 50% in cross-subsidy surcharge if granted by the State

Commission by way of a judicial order, as in the instant case, does not have the effect of altering or amending the Regulations as the said Regulations only provide for imposition of cross-subsidy surcharge, but are silent on the aspect of rate of such cross-subsidy surcharge on co-generators. We are in agreement with this submission.

v. At this point of time it is worth to mention this Tribunal's judgement dated 26.4.2010 in Appeal No. 57 of 2009 (Century Rayon Case). The relevant portion of the judgement is reproduced below:

> *"16. In the above context, the contention that the sale of electricity to any person is to be read in the context of the sale by the co-generator or the generator of electricity from the renewable source of energy does not merit consideration. The Appellant is a co-generator. It produces energy more efficiently as compared to conventional power plants which is to be treated at par with the electricity from the renewable source of generation. When such being the case, the fastening of obligation on the co-generator to procure electricity from renewable energy producer would defeat the object of section 86(1)(e). These two categories of generators namely: (i) Co-generators and (ii) generators of electricity through renewable sources of energy are required to sell the electricity to any person as may be directed by the State Commission.*

....

....

39. These documents as well as the relevant provisions of the Act and the National Electricity Policy and National Electricity Plan and Tariff Policy would make it clear that it is mandatory on the part of the State Commission to give encouragement to co-generation in the industry without reference to any type of fuel or the nature of source of energy whether conventional or non-conventional.

....

....

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....

(IV) The clear meaning of the words contained in Section 86(1)(e) is that both are different and both are required to be promoted and as such the fastening of liability on one in preference to the other is totally contrary to the legislative interest.

(V) Under the scheme of the Act, both renewable source of energy and cogeneration power plant, are equally entitled to be promoted by State Commission through the suitable methods and suitable directions, in view of the fact that cogeneration plants, who provide many number of benefits to environment as well as to the public at large, are to be entitled to be treated at par with the other renewable energy sources."

From the above it is clear that co-generation power plants and renewable source of energy are to be equally promoted by the State Commission and co-generators are to be treated at par with other sources of renewable energy.

vi. Let us now examine the Section 2 (12) of the Act. The relevant portion is reproduced below:

> *"2*
> *…………………………………..*
> *…………………………………..*
> *(12) "Cogeneration" means a process which simultaneously produces two or more forms of useful energy (including electricity);"*

According to the above definition cogeneration is a process which simultaneously produces two or more forms of energy including electricity.

vii. The State Commission has emphasised that co-generation as defined in the Act does not mean that exact at the same time, two forms of useful energy should be produced. The Ministry of Power policy describes co-generation plants as *"Bottoming Cycle: Any facility that uses waste industrial heat for power generation by supplementary heat from any fossil fuel."*

We also agree that the sponge iron based co-generation plants falls under the category of Bottoming Cycle. In sponge iron plants during the processing of iron the waste heat is

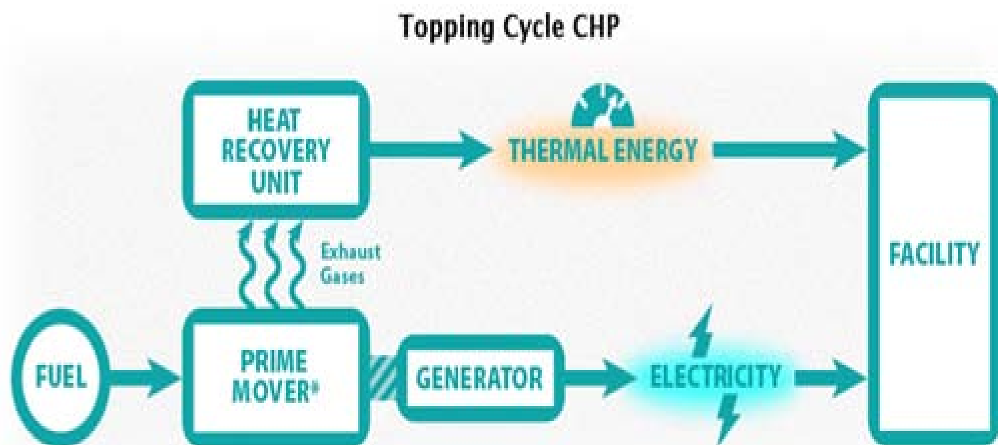
used in a WHRB for producing steam for power generation purposes. Thus waste heat which otherwise would have to be released in the air causing environmental pollution has been gainfully utilized for power generation. As discussed above in the foregoing paragraphs that this Tribunal in vide its judgment in Appeal Nos. 32, 33 & 118 of 2009 has already decided sponge iron based plants generating electricity as co-generation plants. Here it is important to revisit the basics of cogeneration.

Cogeneration or Combined Heat and Power (CHP) is defined as the sequential generation of two different forms of useful energy from a single primary energy source, typically mechanical energy and thermal energy. Mechanical energy may be used either to drive an alternator for producing electricity, or rotating equipment such as motor, compressor, pump or fan for delivering various services. Thermal energy can be used either for direct process applications or for indirectly producing steam, hot water, hot air for dryer or chilled water for process cooling. Co-generation systems can be characterized either as topping-cycle or bottoming-cycle generation which are defined as follows;

Topping Cycle Co-generation system:

Topping-cycle systems produce electricity first, then recover the excess thermal energy for heating or cooling applications. This system is commonly used. Typical examples include a gas turbine or diesel engine producing

electrical or mechanical power followed by a heat recovery boiler to create steam to drive a secondary steam turbine. This is called a combined-cycle topping system. The second type of system burns fuel (any type) to produce high-pressure steam that then passes through a steam turbine to produce power with the exhaust provides low-pressure process steam. This is a steam-turbine topping system. A third type employs heat recovery from an engine exhaust and/or jacket cooling system flowing to a heat recovery boiler, where it is converted to process steam / hot water for further use. The fourth type is a gas-turbine topping system. A natural gas turbine drives a generator. The exhaust gas goes to a heat recovery boiler that makes process steam and process heat.

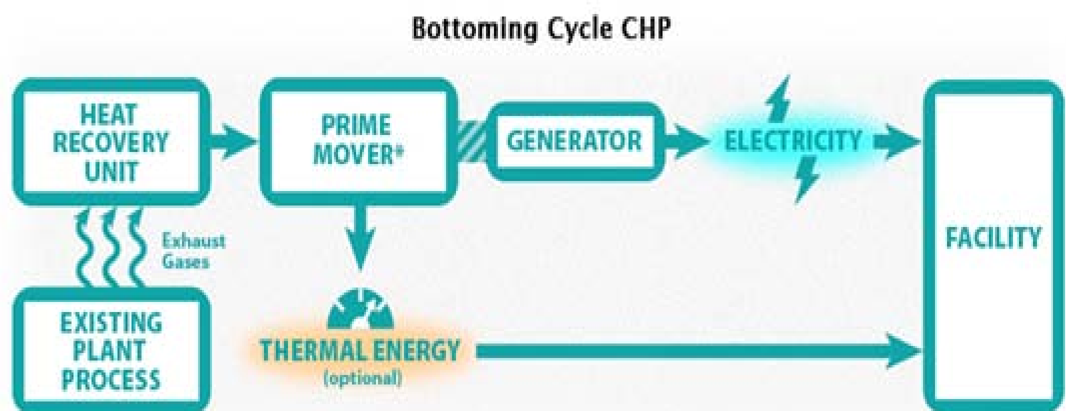


Bottoming Cycle CHP

In a bottoming cycle, the primary fuel produces high temperature thermal energy and the heat rejected from the

process is used to generate power through a waste heat recovery boiler and a turbine generator. These systems are also known as "waste heat to power". These are suitable for manufacturing processes that require heat at high temperature in furnaces and kilns, and reject heat at significantly high temperatures. Their areas of application include cement, steel, ceramic, gas and petrochemical industries. Bottoming cycle plants are much less common than topping cycle plants.

Both topping- and bottoming-cycle systems are types of cogeneration.



From the above technical details of cogeneration it can be seen that there is always sequential generation of other forms of energy. For example, process steam in topping cycle for heating/cooling purpose can be generated only after generation of electricity. Accordingly, the contention of

the Licensee Appellant regarding simultaneous generation of forms of energy is misplaced.

As discussed above, the plants of the Generator Group Appellants fall under the category of bottoming up cycle are to be considered as cogeneration plants and thus they also fall within the meaning of the Section 2 (12) of the Act.

viii. In the present case also there was no specific regulation for providing 50% concession on CSS for power consumed from co-generation plants. As per this Tribunal's judgment co-generation is to be treated at par with the renewable sources of energy. We find that the Regulations 2007/2011 are silent on applicability of concession in CSS when a CGP loses its captive status. The same has been done by the State Commission by way of issuing specific orders in this regard. This Tribunal earlier has also upheld the decision of the State Commission. In view of our discussions in the foregoing paragraphs as above, we are of the considered opinion that there is no infirmity in the decision of the State Commission in considering sponge iron based plants as co-generation plants and granting 50% concession on CSS when these plants lose their CGP status only on the portion of the power generated through WHRB in a particular financial year at par with concession granted on other renewable sources of energy.

ix. Hence these issues raised by the Licensee Appellant are decided against it.

4. On the fifth issue i.e. How to segregate generation from co-generation and other sources. Who and where to install the meters?, we observe as follows:

i. The Generator Group Respondents have submitted that despite directions of the State Commission the Licensee Appellant neither has taken any steps to install meters to measure generation from co-generation station nor any Committee submitted any such report. It is not open for the Licensee Appellant to make wild and baseless allegations regarding the difficulty in apportionment of the generation and consumption from waste heat recovery boilers of the co-generators. The Generator Group Respondents have referred to the State Commission's orders dated 27.11.2008 and 21.5.2013. In this regard the examination of the directions of the State Commission is important.

ii. The relevant extract from State Commission's order dated 27.11.2008 is reproduced below:

"(iii) Generation of electricity by a power plant based on waste heat recovery of sponge iron kilns cogeneration? The answer is yes. Since one of the responsibilities assigned to the Commission is cogeneration and we feel that cogeneration plants based on waste heat of sponge iron

merit such promotion the cross-subsidy payable shall be reduced to half the normal rate. The company shall pay cross-subsidy surcharge to the licensee at half the normal rate for the energy consumed in its sponge iron industry during the year 2006-07. For the future the Board shall ensure installation of suitable meter to ascertain the power consumption by the industry at the consuming end. On the basis of such consumption cross-subsidy surcharge shall be payable to the Board, every month, final adjustment being made at the end of the financial year. Such cross-subsidy shall be as specified by the Commission for the voltage level, at which the industry has connectivity with the grid. While working out consumption, the power consumed by way of auxiliary consumption and auxiliary facilities such as, ESP etc., which is common to both the generator and the industry, shall be excluded. This facility provided to a co-generation plant will, however, not be available in case of the power generated using the other boilers which have been installed primarily for optimization of capacity and as these boilers have no direct relationship with the operation of the sponge iron plant. Therefore if the consumption of the industry exceeds the generation of the cogeneration plant calculated on an annual basis, in proportion to the capacity of the boiler, cross-subsidy shall be payable at full rate on the amount of electricity consumed in excess of generation from WHR boilers. The company should declare the potential of power generation from the steam generated by waste heat recovery

boiler and other boilers to the Board, since both the boilers support the same turbine for generation of electricity."

From the above it is clear that it was the responsibility of the Licensee Appellant to ensure installation of suitable meter to ascertain the power consumption by the industry at the consuming end. On the basis of such consumption cross-subsidy surcharge shall be payable to the Licensee Appellant, every month subject to final adjustment to be made at the end of the financial year.

iii. Further, the State Commission vide Order dated 21.05.2013 in Petition No. 28 of 2012 (N) directed that a Committee be constituted which would study all the aspects regarding generation, consumption and metering of co-generation power. The relevant extract from the order is reproduced below:

"33. This Committee shall certify the consumption and quantum of power generated from co- generation power plant. CREDA after consultation with CSPDCL and CEI shall submit the detailed procedure within 30 days of issue of this order to the Commission for approval. The detail procedure shall include:

1. Aspects such as metering arrangements of co-generation power plant.

2. Generation and consumption of electricity generated from cogeneration power plant.

3. All other matters relevant for the purpose."

iv. The Generator Group Respondents have submitted that as on date there is no report of any such Committee to recommend and implement the metering and consumption issues from a CGP. In view of our decisions on the issue nos. three and four i.e. power generated from WHRB of sponge iron plants to be considered as co-generation and applicability of 50% concession on CSS for captive consumption of such power the issues related to metering and captive consumption from CGP becomes very vital. It is not understood by this Tribunal that even the decision given by the State Commission way back in 2008 and 2013 no progress has been made to sort out these issues. The State Commission should take all necessary steps as deemed fit to sort out and smoothen the process of segregation of power generated from WHRB / other boilers/ sources, their metering, captive consumption export to grid etc. This should be completed in a time bound manner within a period of one year from the issue of this judgement with intimation to this Tribunal.

v. The parties also relied on various judgments of the Supreme Court and of this Tribunal and other regulations/orders in support of their contentions. In our opinion for the disposal of these appeals it is not necessary to discuss them because the issues involved in these appeals are extremely technical in nature. We have discussed them in depth hereinabove. We are

of the considered opinion that there is no infirmity in the Impugned Orders of the State Commission.

ORDER

We are of the considered opinion that the issues raised in the present Appeals are devoid of merit.

Accordingly, the Appeals are hereby dismissed. The Impugned Orders in case of the Generator Group Appellants and Licensee Appellant passed by the State Commission are hereby upheld. However, the State Commission should take necessary steps as deemed fit to sort out and smoothen the process of metering, captive consumption and levy of applicable CSS on the same and the same should be completed in a time bound manner within a period of one year from the issue of this judgement as brought out at S. No. C. 4. iv above. In view of above the connected IAs do not survive and are disposed of as such.

No order as to costs.

Pronounced in the Open Court on this **27th day of September, 2017.**

(I.J. Kapoor)
Technical Member

(Mrs. Justice Ranjana P. Desai)
Chairperson

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REPORTABLE/NON-REPORTABLE
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