

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APL NO. 106 OF 2018 & IA NO. 513 OF 2018 & IA NO. 32 OF 2019,
APL NO. 136 OF 2018 & IA NO. 625 OF 2018,
APL NO. 146 OF 2018 & IA NO. 662 OF 2018,
APL NO. 147 OF 2018 & IA NO. 666 OF 2018,
APL NO. 150 OF 2018 & IA NO. 674 OF 2018 & IA NO. 503 OF 2019,
APL NO. 152 OF 2018 & IA NO. 702 OF 2018,
APL NO. 205 OF 2018,
APL NO. 234 OF 2018,
APL NO. 340 OF 2018 & IA NO. 1636 OF 2018 & IA NOS. 31 & 70 OF 2019,
APL NO. 341 OF 2018 & IA NO. 1638 OF 2018 & IA NOS. 34 & 71 OF 2019,
APL NO. 37 OF 2020 & IA NO. 2059 OF 2019,
APL NO. 38 OF 2020 & IA NO. 2060 OF 2019,
APL NO. 39 OF 2020 & IA NO. 2067 OF 2019,
APL NO. 40 OF 2020 & IA NO. 2065 OF 2019,
APL NO. 196 OF 2020 & IA NO. 1576 OF 2020,
APL NO. 197 OF 2020 & IA NO. 1562 OF 2020
APL NO. 198 OF 2020 & IA NO. 1621 OF 2020,
APL NO. 199 OF 2020 & IA NO. 1551 OF 2020,
APL NO. 200 OF 2020 & IA NO. 1610 OF 2020,
APL NO. 201 OF 2020 & IA NO. 1540 OF 2020 & 1811 OF 2021
APL NO. 202 OF 2020 & IA NO. 1596 OF 2020,
APL NO. 203 OF 2020 & IA NO. 1624 OF 2020
APL NO. 204 OF 2020 & IA NO. 1604 OF 2020
APL NO. 205 OF 2020 & IA NOS. 1581 & 1880 OF 2020 & 1810 OF 2021
APL-206/2020 & IA-1667/2020,
APL NO. 207 OF 2020 & IA NO. 1554 OF 2020,
APL NO. 208 OF 2020 & IA NO. 1565 OF 2020
APL NO. 209 OF 2020 & IA NO. 1618 OF 2020,
APL NO. 210 OF 2020 & IA NO. 1601 OF 2020,
APL NO. 211 OF 2020 & IA NO. 1673 OF 2020,
APL NO. 219 OF 2020 & IA NO. 1663 OF 2020,
APL NO. 221 OF 2020 & IA NO. 1687 OF 2020,
APL NO. 222 OF 2020 & IA NO. 1690 OF 2020
APL NO. 231 OF 2020 & IA NO. 1708 OF 2020
APL NO. 232 OF 2020 & IA NO. 1712 OF 2020,
APL NO. 9 OF 2021 & IA NO. 1809 OF 2020,
APL NO. 10 OF 2021 & IA NOS. 1762 OF 2020
APL-12 OF 2021 & IA NO. 1849 OF 2020
AND
APL NO. 97 OF 2021 & IA NO. 278 OF 2021

Dated: 26th November, 2021

Present: Hon'ble Mr. Ravindra Kumar Verma, Officiating Chairperson
Hon'ble Mr. Justice R.K. Gauba, Judicial Member

APL No. 106 OF 2018 &
IA No. 513 OF 2018 & IA No. 32 OF 2019

In the matter of:

Sai Wardha Power Generation Limited
(Previously Sai Wardha Power Limited)
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
Versus

....Appellant(s)

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1,13th Floor,Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director
5th Floor, Prakashgad
Bandra (East)
Mumbai – 400 051
...Respondent No.2
3. Reliance Infrastructure Limited
Through its Managing Director
W.E Highway
Dindoshi, Goregaon (East)
Mumbai-400 097
...Respondent No.3
4. Tata Power Company Limited
Through its Managing Director
Dharavi Receiving Station,
Near Shalimar Ind. Estate, Matsunaga
Mumbai-400 019
...Respondent No.4
5. Maharashtra State Load Despatch Center,
Through its Chief Engineer,
Thane–Belapur Road, Airoli,
Navi Mumbai – 400 708, Maharashtra.
...Respondent No.5

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Amit Kapur
Mr. Approva Misra
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai for R-4

Ms. Arti Singh
Mr. Akashdeep Singh Roda for R-5

APL No. 136 OF 2018 &
IA No. 625 OF 2018

Viraj Profiles Limited
G-34, MIDC Tarapur Industrial Area,
Boisar, District Palghar 401 506

....Appellant(s)

Versus

1. Maharashtra State Electricity Distribution Company Limited
Through Chief Engineer
Plot No. G-9, 5th Floor, Prakashgad,
Bandra (East)
Mumbai – 400 051

...Respondent No.1

2. Sai Wardha Power Generation Limited
Through Director
8-2-293, 82A, 431A,
Road No.22, Jubilee Hills,
Hyderabad – 500 033

...Respondent No.3

3. Reliance Infrastructure Limited
Through Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,

Navi Mumbai, MH 400710 IN

...Respondent No.3

4. Tata Power Company Limited
Through Director
Bombay House, 24 Homi Modi Street,
Fort, Mumbai – 400 001

...Respondent No.4

5. Maharashtra State Load Despatch Center,
Through Chief Engineer,
State Load Despatch Centre,
Thane–Belapur Road, P.O. Airoli,
Navi Mumbai – 400 708, Maharashtra.

...Respondent No.5

6. Maharashtra Electricity Regulatory Commission,
Through Chairperson
World Trade Centre,
Centre No.1,13th Floor, Cuffe Parade,
Mumbai-400005

...Respondent No.6

Counsel for the Appellant(s) : Ms. Mandakini Ghosh
Mr. Parinay Deep Shah
Ms. Ritika Singhal
Ms. Aradhna Tandon
Ms. Surabhi Pandey

Counsel for the Respondent(s) : Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL/R-1

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan for R-2

Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for Commission

Mr. Amit Kapur
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai for R-4

Ms. Arti Singh
Mr. Akashdeep Singh Roda for R-5

APL No. 147 OF 2018 &
IA No. 666 OF 2018

Cosmo Films Limited,
Through: Chief Financial Officer
B-14, 8 & 9, Waluj MIDC Area,
Waluj, District Aurangabad

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director
5th Floor, Prakashgad
Bandra (East),
Mumbai – 400 051
...Respondent No.2
3. Sai Wardha Power Generation Limited
Through its Managing Director
(Previously Sai Wardha Power Limited)
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
...Respondent No.3
4. Maharashtra State Load Despatch Center,
Through its Chief Engineer,
Thane–Belapur Road, Airoli,
Navi Mumbai – 400 708, Maharashtra.
...Respondent No.4
5. Reliance Infrastructure Limited
Through its Managing Director
W.E Highway
Dindoshi, Goregaon (East)
Mumbai-400 097
...Respondent No.5
6. Tata Power Company Limited
Through its Managing Director
Dharavi Receiving Station,
Near Shalimar Ind. Estate, Matunaga
Mumbai-400 019
...Respondent No.6

Counsel for the Appellant(s) : Mr. Ganesan Umapathy
Ms. Pavitra Balakrishnan

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan for R-3

Mr. Amit Kapur
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai for R-6

APL No. 146 OF 2018 &
IA No. 662 OF 2018

Mahalaxmi TMT Pvt. Ltd.
B/306-309, 3rd Floor,
Dynasty Business Park,
A.K. Road, J. B. Nagar, Andheri (E),
Mumbai – 400 059
Rep. by its Authorised Signatory

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director
5th Floor, Prakashgad
Bandra (East),
Mumbai – 400 051
...Respondent No.2
3. Sai Wardha Power Generation Limited
(Previously Sai Wardha Power Limited)
Through its Managing Director
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
...Respondent No.3

4. Maharashtra State Load Despatch Center,
Through its Chief Engineer,
Thane–Belapur Road, Airoli,
Navi Mumbai – 400 708, Maharashtra. ...Respondent No.4
5. Reliance Infrastructure Limited
Through its Managing Director
W.E Highway
Dindoshi, Goregaon (East)
Mumbai-400 097 ...Respondent No.5
6. Tata Power Company Limited
Through its Managing Director
Dharavi Receiving Station,
Near Shalimar Ind. Estate, Matunaga
Mumbai-400 019 ...Respondent No.6

Counsel for the Appellant(s) : Mr. Ganesan Umapathy
Ms. Pavitra Balakrishnan

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for R-2/MSEDCL

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan for R-3

Mr. Amit Kapur
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai for R-6

**APL No. 150 OF 2018 &
IA No. 674 OF 2018 & IA No. 503 OF 2019,**

Lupin Limited
2/A, Laxmi Towers,
Bandra Kurla Complex,
Bandra (East)
Mumbai – 400 051

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,

Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director
5th Floor, Prakashgad, Plot No. G-9
Bandra (East),
Mumbai – 400 051

...Respondent No.2

3. Sai Wardha Power Generation Limited
(Previously Sai Wardha Power Limited)
Through its Chairman
8-2-293/82/A/431/A,
Road No.22, Jubilee Hills,
Hyderabad – 500 033

...Respondent No.3

4. Reliance Infrastructure Limited
Through its Managing Director
W.E Highway,
Dindoshi, Goregaon (East)
Mumbai-400 097

...Respondent No.4

5. Tata Power Company Limited
Through its Managing Director
Dharavi Receiving Station,
Near Shalimar Ind. Estate, Matunga
Mumbai-400 019

...Respondent No.5

6. Maharashtra State Load Despatch Center,
Through its Chief Engineer,
Thane–Belapur Road, Airoli,
Navi Mumbai – 400 708, Maharashtra.

...Respondent No.6

Counsel for the Appellant(s) : Mr. Sanjeev K. Kapoor
Ms. Divya Chaturvedi
Mr. Saransh Shaw
Ms. Srishti Rai

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha

Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ashwin Ramanathan for R-3

Mr. Amit Kapur
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai for R-5

Ms. Arti Singh
Mr. Akashdeep Singh Roda for R-6

APL No. 152 OF 2018 &
IA No. 702 OF 2018

M/s. R.L. Steels & Energy Pvt. Ltd.
A-304, Abhay Steel House,
Baroda Street, Carnac Bunder,
Mumbai – 400 009
Rep. by its Vice President
Versus

....Appellant(s)

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director
5th Floor, Prakashgad
Bandra (East),
Mumbai – 400 051
...Respondent No.2
3. Sai Wardha Power Generation Limited
(Previously Sai Wardha Power Limited)
Through its Managing Director
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
...Respondent No.3
4. Maharashtra State Load Despatch Center,
Through its Chief Engineer,
Thane–Belapur Road, Airoli,
Navi Mumbai – 400 708, Maharashtra.
...Respondent No.4

5. Reliance Infrastructure Limited
Through its Managing Director
W.E Highway
Dindoshi, Goregaon (East)
Mumbai-400 097

...Respondent No.5

6. Tata Power Company Limited
Through its Managing Director
Dharavi Receiving Station,
Near Shalimar Ind. Estate, Matunaga
Mumbai-400 019

...Respondent No.6

Counsel for the Appellant(s) : Mr. Ganesan Umapathy
Ms. Pavitra Balakrishnan

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for R-2/MSEDCL

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan for R-3

Mr. Amit Kapur
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai for R-6

APL No. 205 OF 2018

The Tata Power Company Limited (Distribution)
Through its Authorized Representative
Backbay Receiving Station,
148 Lt. Gen. J Bhonsale Marg,
Nariman Point, Mumbai – 400 021

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005

...Respondent No.1

2. Sai Wardha Power Generation Limited
(Previously Sai Wardha Power Limited)
Through its Managing Director,
8-2-293/82/A/431/A,
Road No.22, Jubilee Hills,
Hyderabad – 500 033
...Respondent No.2
3. Maharashtra State Electricity Distribution Company Limited
Through its Chief Engineer (Commercial)
Prakashgad, Plot No. G-9,
Anant Kanekar Marg, Bandra (East),
Mumbai – 400 051, Maharashtra
...Respondent No.3
4. Reliance Infrastructure Limited
Through its General Manager (Regulatory Affairs),
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710
...Respondent No.4
5. Maharashtra State Load Despatch Center,
Through its Chief Engineer,
Thane–Belapur Road, Airoli,
Navi Mumbai – 400 708, Maharashtra.
...Respondent No.5
6. Thane Belapur Industries Association
Through its General Secretary (Dr. Ashok Pendse),
Rabale Village, Post Ghansoli
Plot P-14, MIDC
Navi Mumbai – 400 701
...Respondent No.6
7. Prayas (Energy Group)
Unit III A & B, Devgiri,
Joshi Railway Museum Lane,
Kothrud Industrial Area
Kothrud, Pune – 411 038
...Respondent No.7
8. Viraj Profiles Limited
Through its Managing Director
G-34, MIDC Tarapur Industrial Area
Boisar, District Palghar,
Maharashtra - 401 506
...Respondent No.8
9. Bebitz Flanges Works (P) Limited
Through its Managing Director
Survey No.140/2, 128/1-1,
New, Village – Saravali, Boisar,
Taluka – Palghar
District – Palghar, Maharashtra – 401 501
...Respondent No.9

10. Mahindra & Mahindra Ltd.
Through its Managing Director
Automotive Sector, Kandivali

Mahindra & Mahindra Ltd.
Automotive & Farm Equipment Sectors
Mahindra Towers, Akurli Road
Kandivali (East), Mumbai – 400 101
...Respondent No.10
11. Mahindra Vehicle Manufacturers Ltd.
Through its Managing Director
P.No. A-1, Phase-IV, Chakan MIDC
Tal: Khed, District: Pune Nighoje, Chakan
Maharashtra – 410 501
...Respondent No.11
12. Mahindra CIE Automotive Limited
(Formerly Mahindra Forgings Limited)
Through its Managing Director
P-857-860, Chakan Ambethan Road
Tal: Khed, District: Pune Chakan
Maharashtra – 410 501
...Respondent No.12
13. Mahindra Hinoday Industries Limited
Through its Managing Director
GAT No.318, Gaon Urse,
Tal - Maval, Pune
Maharashtra – 410 506
...Respondent No.13
14. Mahindra Sanyo Special Steels Limited
Through its Managing Director
At-PO – Khopoli
Tel: Khalapur, Dist: Raigad Khopoli
Maharashtra
...Respondent No.14
15. R.L. Steels & Energy Ltd.
Through its Managing Director
A-304, Abhay Steel House
Baroda Street, Carnac Bunder
Mumbai – 400 009
...Respondent No.15
16. India Steel Works Ltd.
Through its Managing Director
Zenith Compound, Khopoli,
Tal – Khalapur, Dist – Raigad
Maharashtra
...Respondent No.16
17. Sona Alloys Private Ltd.
Through its Managing Director
Plot No. C 1, G. No. 399/402

- Lonand MIDC, Tal – Khandala
Dist- Satara 415 521 Maharashtra ...Respondent No.17
18. Cosmo Films Ltd.
Through its Managing Director
B-14, 8 & 9, Waluj MIDC Area
Waluj, District Aurangabad
Maharashtra – 431 136 ...Respondent No.18
19. Mahalaxmi TMT Private Ltd.
Through its Managing Director
B/306-309, 3rd Floor
Dynasty Business Park, A.K. Road
J.B. Nagar, Andheri (E)
Mumbai – 400 059 ...Respondent No.19
20. Hindustan Petroleum Corporation Limited
Through its Managing Director
Mumbai Refinery
B.D. Patil Marg, Mahul, Chembur
Mumbai – 400 074 ...Respondent No.20
21. Lupin Limited
Through its Managing Director
2/A, Laxmi Towers,
Bandra Kurla Complex,
Bandra (East),
Mumbai – 400 051 ...Respondent No.21

Counsel for the Appellant(s)	:	Mr. Amit Kapur Mr. Apoorva Misra Mr. Abhishek Munot Mr. Malcolm Dinyar Desai Mr. Kunal Kaul Mr. Tushar Nagar
Counsel for the Respondent(s)	:	Mr. S.K. Rungta, Sr. Adv. Ms. Pratiti Rungta for R-1 Mr. Anand K. Ganesan Ms. Swapna Seshadri Mr. Ashwin Ramanathan for R-2 Mr. G. Saikumar Mr. Samir Malik Mr. Rahul Sinha Ms. Nikita Choukse Ms. Rimali Batra for MSEDCL/R-3

Ms. Arti Singh
Mr. Akashdeep Singh Roda for R-5

Mr. Rohit Singha
Mr. Abhishek Vashisht
Mr. Nikhil Rawat for R-8 & 9

Ms. Dipali Sheth
Mr. Keyur Talsania for R-12 & R-14/MSSSPL

APL No. 234 OF 2018

The Tata Power Company Limited (Distribution)
Through its Authorized Representative
Backbay Receiving Station
148 Lt. Gen. J Bhonsale Marg
Nariman Point, Mumbai – 400 021
Versus

....Appellant(s)

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Sai Wardha Power Generation Limited
Through its Managing Director
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
...Respondent No.2
3. Maharashtra State Electricity Distribution Company
Limited
Through its Chief Engineer (Commercial)
Prakashgad, Plot No. G-9
Anant Kanekar Marg, Bandra (East)
Mumbai – 400 051, Maharashtra
...Respondent No.3
4. Maharashtra State Load Despatch Center,
Through its Chief Engineer,
Thane–Belapur Road, P.O. Airoli,
Navi Mumbai – 400 708, Maharashtra.
...Respondent No.4
5. Thane Belapur Industries Association
Through its General Secretary (Dr. Ashok Pendse),
Rabale Village, Post Ghansoli
Plot P-14, MIDC
Navi Mumbai – 400 701
...Respondent No.5

6. Viraj Profiles Limited
Through its Managing Director
G-34, MIDC Tarapur Industrial Area
Boisar, District Palghar,
Maharashtra - 401 506

...Respondent No.6
7. Bebitz Flanges Works (P) Limited
Through its Managing Director
Survey No.140/2, 128/1-1,
New Village-Saravali, Boisar, Taluka-Palghar,
Dist.- Palghar, Maharashtra-401501

...Respondent No.7
8. Mahindra & Mahindra Ltd.
Through its Managing Director
Automotive Sector, Kandivali

Mahindra & Mahindra Ltd.
Automotive & Farm Equipment Sectors
Mahindra Towers, Akurli Road
Kandivali (East), Mumbai – 400 101

...Respondent No.8
9. Mahindra Vehicle Manufacturers Ltd.
Through its Managing Director
P.No. A-1, Phase-IV, Chakan MIDC,
Tal: Khed, District: Pune Nighoje, Chakan
Maharashtra – 410 501

...Respondent No.9
10. Mahindra CIE Automotive Limited
(Formerly Mahindra Forgings Limited)
Through its Managing Director
P-857-860, Chakan Ambethan Road,
Tal: Khed, District: Pune Chakan
Maharashtra – 410 501

...Respondent No.10
11. Mahindra Hinoday Industries Limited
Through its Managing Director
GAT No.318, Gaon Urse,
Tal - Maval, Pune
Maharashtra – 410 506

...Respondent No.11
12. Mahindra Sanyo Special Steels Limited
Through its Managing Director
At-PO – Khopoli
Tel: Khalapur, Dist: Raigad Khopoli
Maharashtra

...Respondent No.12
13. R.L. Steels & Energy Ltd.
Through its Managing Director
A-304, Abhay Steel House,
Baroda Street, Carnac Bunder

- Mumbai – 400 009 ...Respondent No.13
14. India Steel Works Ltd.
Through its Managing Director
Zenith Compound, Khopoli,
Tal – Khalapur, Dist – Raigad
Maharashtra ...Respondent No.14
15. Sona Alloys Private Ltd.
Through its Managing Director
Plot NO. C 1, G. No. 399/402
Lonand MIDC, Tal – Khandala
Dist- Satara 415 521 ...Respondent No.15
16. Mahalaxmi TMT Private Ltd.
Through its Managing Director
B/306-309, 3rd Floor
Dynasty Business Park, A.K. Road
J.B. Nagar, Andheri (E)
Mumbai – 400 059 ...Respondent No.16
17. Cosmo Films Ltd.
Through its Managing Director
B-14, 8 & 9, Waluj MIDC Area
Waluj, District Aurangabad
Maharashtra – 431 136 ...Respondent No.17

Counsel for the Appellant(s) : Mr. Amit Kapur
Mr. Apoorva Misra
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai
Mr. Kunal Kaul
Mr. Tushar Nagar

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Ashish Singh for R-2

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL/R-3

Ms. Arti Singh

Mr. Akashdeep Singh Roda for R-4

Mr. Rohit Singha
Mr. Nikhil Rawat for R-6 & 7

Ms. Dipali Sheth
Mr. Keyur Talsania for R-10 & R-
12/M-CIE AL

APL No. 340 OF 2018 &
IA No. 1636 OF 2018 & IA Nos. 31 & 70 OF 2019

Sai Wardha Power Generation Limited
(Previously Sai Wardha Power Limited)
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
Versus

....Appellant(s)

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Chairman & Managing Director
5th Floor, Prakashgad
Bandra (East)
Mumbai – 400 051
...Respondent No.2
3. Tata Power Company Limited (TPC)
Through its Chairman & Managing Director
Backbay Receiving Station
148 Lt. Gen. J.Bhonsale Marg,
Nariman Point, Mumbai – 400 021
...Respondent No.3
4. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710
...Respondent No.4
5. Maharashtra State Load Despatch Center (MSLDC)
Through its Chairman & Managing Director
Thane–Belapur Road, P.O. Airoli,
Navi Mumbai – 400 708, Maharashtra.
...Respondent No.5

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Amit Kapur
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai
Mr. Kunal Kaul
Mr. Tushar Nagar for R-3

Ms. Arti Singh
Mr. Akashdeep Singh Roda for R-5

APL No. 341 OF 2018 &
IA No. 1638 OF 2018 & IA Nos. 34 & 71 OF 2019

Sai Wardha Power Generation Limited
(Previously Sai Wardha Power Limited)
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
Versus

....Appellant(s)

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited
Through its Chairman & Managing Director
5th Floor, Prakashgad
Bandra (East)
Mumbai – 400 051

...Respondent No.2

3. Tata Power Company Limited (TPC)
Through its Chairman & Managing Director
Backbay Receiving Station

148 Lt. Gen. J.Bhonsale Marg,
Nariman Point, Mumbai – 400 021

...Respondent No.3

4. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
DhirubhaiAmbani Knowledge City,
Navi Mumbai-400710

...Respondent No.4

5. Maharashtra State Load Despatch Center (MSLDC)
Through its Chairman & Managing Director
Thane–Belapur Road, P.Q. Airoli,
Navi Mumbai – 400 708, Maharashtra.

...Respondent No.5

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ashwin Ramanathan

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Amit Kapur
Mr. Apoorva Misra
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai
Mr. Kunal Kaul
Mr. Tushar Nagar for R-3

Ms. Arti Singh
Mr. Akashdeep Singh Roda for R-5

**APL No. 37 OF 2020 &
IA No. 2059 OF 2019**

Mahindra Sanyo Special Steel Private Limited,
74, Ganesh Apartment, 7th floor,
Opposite Sitladevi Temple,
Lady Jamshedji Road,
Mahim (West),
Mumbai – 400016

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director
5th Floor, Prakashgad, Plot No. G-9
Anant Kanekar Marg, Bandra (East)
Mumbai – 400 051, Maharashtra
...Respondent No.3
3. Sai Wardha Power Generation Limited
Through the Resolution Professional / Director,
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
...Respondent No.2
4. The Tata Power Company Limited (TPC)
Through its Chairman and Managing Director,
Backbay Receiving Station
148 Lt. Gen. J Bhonsale Marg,
Nariman Point, Mumbai – 400 021
...Respondent No.4
5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710
...Respondent No.5
6. Maharashtra State Load Despatch Center (MSLDC),
Through its Chairman and Managing Director,
Thane–Belapur Road, P.Q. Airoli,
Navi Mumbai – 400 708, Maharashtra.
...Respondent No.6

Counsel for the Appellant(s) : Mr. SajanPoovayya, Sr. Adv.
Ms. Dipali Sheth
Ms. Vinita Melvin

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. PratitiRungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha

Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL/R-2

Mr. Amit Kapur
Mr. Apoorva Misra
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai
Mr. Kunal Kaul
Mr. Tushar Nagar
Ms. Samikrith Rao Puskuri for R-4

Mr. Sudhanshu Choudhari
Mr. Yogesh Subhash Kolte for R-6

APL No. 38 OF 2020 &
IA No. 2060 OF 2019

Mahindra Sanyo Special Steel Private Limited
74, Ganesh Apartment, 7th floor,
Opposite Sitladevi Temple,
Lady Jamshedji Road,
Mahim (West),
Mumbai – 400016

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051, Maharashtra
...Respondent No.3
3. Sai Wardha Power Generation Limited
Through the Resolution Professional / Director,
8-2-293/82/A/431/A
Road No.22, Jubilee Hills,
Hyderabad – 500 033
...Respondent No.2
4. The Tata Power Company Limited (TPC)
Through its Chairman and Managing Director,
Backbay Receiving Station
148 Lt. Gen. J Bhonsale Marg,

Nariman Point, Mumbai – 400 021

...Respondent No.4

5. Reliance Infrastructure Limited (Now Adani Electricity Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
DhirubhaiAmbani Knowledge City,
Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Center (MSLDC),
Through its Chairman and Managing Director,
Thane–Belapur Road, P.Q. Airoli,
Navi Mumbai – 400 708, Maharashtra.

...Respondent No.6

Counsel for the Appellant(s) : Mr. SajanPoovayya, Sr. Adv.
Ms. DipaliSheth
Ms. Vinita Melvin

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. PratitiRungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL/R-2

Mr. Amit Kapur
Mr. Apoorva Misra
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai
Mr. Kunal Kaul
Mr. Tushar Nagar
Ms. Samikrith Rao Puskuri for R-4

Mr. Sudhanshu Choudhari
Mr. Yogesh Subhash Kolte for R-6

**APL No. 39 OF 2020 &
IA No. 2067 OF 2019**

Mahindra CIE Automotive Limited,
Mahindra Towers, 1st Floor,
Dr. G. M. Bhosale Marg,
Worli, Mumbai – 400 018
Versus

....Appellant(s)

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary

World Trade Centre,
Centre No.1,13th Floor,Cuffe Parade,
Colaba, Mumbai-400005

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited

Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051, Maharashtra

...Respondent No.3

3. Sai Wardha Power Generation Limited
Through the Resolution Professional / Director,
8-2-293/82/A/431/A
Road No.22, Jubilee Hills,
Hyderabad – 500 033

...Respondent No.2

4. The Tata Power Company Limited (TPC)
Through its Chairman and Managing Director,
Backbay Receiving Station
148 Lt. Gen. J Bhonsale Marg,
Nariman Point, Mumbai – 400 021

...Respondent No.4

5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
DhirubhaiAmbani Knowledge City,
Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Center (MSLDC),
Through its Chairman and Managing Director,
Thane–Belapur Road, P.Q. Airoli,
Navi Mumbai – 400 708, Maharashtra.

...Respondent No.6

Counsel for the Appellant(s) : Mr. SajanPoovayya, Sr. Adv.
Ms. DipaliSheth
Ms. Vinita Melvin

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. PratitiRungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Amit Kapur

Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai
Mr. Kunal Kaul
Mr. Tushar Nagar
Ms. Samikrith Rao Puskuri for R-4

Mr. Sudhanshu Choudhari
Mr. Yogesh Subhash Kolte for R-6

APL No. 40 OF 2020 &
IA No. 2065 OF 2019

Mahindra CIE Automotive Limited,
Mahindra Towers, 1st Floor,
Dr. G. M. Bhosale Marg,
Worli, Mumbai – 400 018

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director,
5th Floor, Prakashgad,
Anant Kanekar Marg, Bandra (East)
Mumbai – 400 051, Maharashtra
...Respondent No.3
3. Sai Wardha Power Generation Limited
Through the Resolution Professional / Director,
8-2-293/82/A/431/A,
Road No.22, Jubilee Hills,
Hyderabad – 500 033
...Respondent No.2
4. The Tata Power Company Limited (TPC)
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J Bhonsale Marg,
Nariman Point, Mumbai – 400 021
...Respondent No.4
5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,

Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Center,
Through its Chairman and Managing Director,
Thane–Belapur Road, P.Q. Airoli,
Navi Mumbai – 400 708, Maharashtra.

...Respondent No.6

Counsel for the Appellant(s) : Mr. SajanPoovayya, Sr. Adv.
Ms. DipaliSheth
Ms. Vinita Melvin

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. PratitiRungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Amit Kapur
Mr. Abhishek Munot
Mr. Malcolm Dinyar Desai
Mr. Kunal Kaul
Mr. Tushar Nagar for R-4

Mr. Sudhanshu Choudhari
Mr. Yogesh Subhash Kolte for R-6

APL NO. 196 OF 2020 & IA NO. 1576 OF 2020

Ramsons Industries Limited
A-30I, Neeri Gaurav,
Central Bazar Road,
Ranrdaspeth, Nagpur 440010, Maharashtra

1st Floor, Ramsons
46, Humpyard Road
Dhantoli, Nagpur – 440012

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1,13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

2. Maharashtra State Electricity Distribution Company Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051. ...Respondent No.2

3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033 ...Respondent No.3

4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021 ...Respondent No.4

5. Reliance Infrastructure Limited (Now Adani Electricity Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710 ...Respondent No.5

6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708 ...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for Sai Wardha Power Ltd

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo for R-4
Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-6

APL NO. 197 OF 2020 & IA NO. 1562 OF 2020

Asahi India Glass Limited
5th Floor, Tower-B
Global Business Park
Mehruli – Gurgaon Road
Gurgaon – 122 002

....Appellant(s)

Unit No. 203 to 208,
Tribhuwan Complex Ishwar Nagar
Mathura Road, New Delhi – 110065

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.
...Respondent No.2
3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033
...Respondent No.3
4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,

148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021

...Respondent No.4

5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708

...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for Sai Wardha Power Ltd

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo

APL NO. 198 OF 2020 & IA NO. 1621 OF 2020,

Owens-Corning (India) Private Limited
7th Floor, Alpha Building,
Hiranandani Gardens, Powai,
Mumbai – 400076, Maharashtra, India

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.
...Respondent No.2
3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033
...Respondent No.3
4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021
...Respondent No.4
5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
HBlock, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710
...Respondent No.5
6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708
...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse

Ms. Rimali Batra for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo for R-4
Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-6

APL NO. 199 OF 2020 &IA NO. 1551 OF 2020

INOX Air Products Private Limited
7th Floor, Ceejay House,
Dr. Annie Beasant Road,
Worli, Mumbai - 400 018

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.

...Respondent No.2

3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033

...Respondent No.3

4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021
...Respondent No.4
5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
HBlock, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710
...Respondent No.5
6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708
...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo for R-4
Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-6

APL NO. 200 OF 2020 &IA NO. 1610 OF 2020

INOX Air Products Private Limited
7th Floor, Ceejay House,
Dr. Annie Beasant Road,
Worli, Mumbai - 400 018

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005. ...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051. ...Respondent No.2
3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033 ...Respondent No.3
4. Tata Power Company Limited (TPC-D),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021 ...Respondent No.4
5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
HBlock, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710 ...Respondent No.5
6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708 ...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anirudh Bhakru
Mr. Samir Malik
Mr. Rahul Sinha for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-6

**APL NO. 201 OF 2020 &
IA NOs. 1540 OF 2020 & 1811 OF 2021**

Mahindra Sanyo Special Steel Private Limited
74, Ganesh Apartment, 7th floor,
Opposite Sitladevi Temple,
Lady Jamshedji Road,
Mahim (West), Mumbai – 400016
Versus

....Appellant(s)

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited,

Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.

...Respondent No.2

3. Sai Wardha Power Generation Limited,
Through the Resolution Professional / Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033

...Respondent No.3

4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021

...Respondent No.4

5. . Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708

...Respondent No.6

Counsel for the Appellant (s) : Mr. Sajan Poovayya, Sr. Adv.
Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta
Ms. Pratiti Rungta for R-1

Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anirudh Bhakru
Mr. Rahul Sinha
Mr. Samir Malik
Ms. Nikita Choukse
Ms. Rimali Batra for R-2/
MSEDCL

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki

for Sai Wardha Power Ltd

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Ms. Jappanpreet Hora for R-6

APL NO. 202 OF 2020 &
IA NO. 1596 OF 2020

Mahindra CIE Automotive Limited
Through its Assistant General Manager (Accounts & Taxation)
Mahindra Towers, 1st floor,
Dr. G.M. Bhosale Marg,
Worli, Mumbai-400018

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.

...Respondent No.2

3. Sai Wardha Power Generation Limited,
Through the Resolution Professional / Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033

...Respondent No.3

4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,

148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021

...Respondent No.4

5. . Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708

...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anirudh Bhakru
Mr. Rahul Sinha
Mr. Samir Malik for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-6

APL NO. 203 OF 2020 &
IA NO. 1624 OF 2020

Asahi India Glass Limited
5th Floor, Tower-B
Global Business Park
Mehruli – Gurgaon Road
Gurgaon – 122 002

....Appellant(s)

Unit No. 203 to 208,
Tribhuwan Complex Ishwar Nagar
Mathura Road, New Delhi – 110065

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005. ...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051. ...Respondent No.2

3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033 ...Respondent No.3

4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021 ...Respondent No.4

5. . Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710 ...Respondent No.5

6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,

Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708

...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anirudh Bhakru
Mr. Rahul Sinha
Mr. Samir Malik for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-6

APL NO. 204 OF 2020 &
IA NO. 1604 OF 2020

Bekaert Industries Private Limited
Through its Company Secretary
B 1, MIDC Ranjangaon,
Taluka Shirur,
Pune - 412209

Versus

....Appellant(s)

1. Maharashtra Electricity Regulatory Commission,

Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

2. Maharashtra State Electricity Distribution Company Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.

...Respondent No.2

3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033

...Respondent No.3

4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021

...Respondent No.4

5. Reliance Infrastructure Limited (Now Adani Electricity Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708

...Respondent No.6

Counsel for the Appellant (s) : Ms. DipaliSheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. PratitiRungta for R-1

Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anirudh Bhakru
Mr. Rahul Sinha
Mr. Samir Malik for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-6

**APL NO. 205 OF 2020 &
IA NOs. 1581 & 1880 OF 2020 & 1366 OF 2021**

Mahindra Sanyo Special Steel Private Limited
74, Ganesh Apartment, 7th floor,
Opposite Sitladevi Temple,
Lady Jamshedji Road,
Mahim (West), Mumbai – 400016
Versus

....Appellant(s)

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.

...Respondent No.2

3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033

...Respondent No.3

4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021
...Respondent No.4
5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710
...Respondent No.5
6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708
...Respondent No.6

Counsel for the Appellant (s) : Mr. SajanPoovayya, Sr. Adv.
Ms. DipaliSheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. PratitiRungta for R-1

Mr. Rahul Sinha
Mr. Samir Malik for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. AnandiniSood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Ms. Jappanpreet Hora for R-6

APL-206/2020 & IA-1667/2020

Lupin Limited
Through Authorized Representative
Kalpataru Inspire, 3rd Floor,
Off Western Express Highway,
Santacruz (E), Mumbai – 400 055

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1,13th Floor,Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director
5th Floor, Plot No. G-9,
PrakashgadBandra (East)
Mumbai – 400 051
...Respondent No.2
3. Sai Wardha Power Generation Limited
Through its Director
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
...Respondent No.3
4. Maharashtra State Load Despatch Center
Through its Chairman & Managing Director
Thane–Belapur Road, P.Q. Airoli,
Navi Mumbai – 400 708
...Respondent No.4
5. Tata Power Company Limited
Through its Chairman & Managing Director
Backbay Receiving Station
148 Lt. Gen. J Bhonsale Marg
Nariman Point, Mumbai – 400 021
...Respondent No.5

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv
Ms. Divya Chaturvedi
Mr. Sanjeev K. Kapoor
Mr. Saransh Shaw
Ms. Srishti Rai

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.

Ms. Pratiti Rungta for R-1

Mr. G. Saikumar
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ashwin Ramanathan for R-3

Mr. Akshay Arora,
Mr. Praval Arora,
Ms. Chesta Mehta Arora,
Mr. Jappanpreet Hora
Mr. Himanshu Goyal for R-4

Mr. Anand Kumar Shrivastava
Mr. Shivam Sinha
Mr. Rahul Jajoo
Ms. Garima Singh for R-5

APL NO. 207 OF 2020 &
IA NO. 1554 OF 2020

Pudumjee Paper Products Limited
Thergaon, Chinchwad,
Pune-411033

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.

...Respondent No.2

3. Sai Wardha Power Generation Limited,
Through its Director,

8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033

...Respondent No.3

4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021

...Respondent No.4

5. . Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708

...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ashwin Ramanathan
for *Sai Wardha Power Ltd*

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora

Mr. Praval Arora
Ms. Chesta Mehta Arora
Ms. Jappanpreet Hora
Mr. Himanshu Goyal for R-6

APL NO. 208 OF 2020 &
IA NO. 1565OF 2020

Mahindra CIE Automotive Limited
Mahindra Towers, 1st floor,
Dr. G.M. Bhosale Marg,
Worli, Mumbai-400018

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1,13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.
...Respondent No.2
3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033
...Respondent No.3
4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021
...Respondent No.4
5. . Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710
...Respondent No.5
6. Maharashtra State Load Despatch Centre (MSLDC),

Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708

...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora
Mr. Himanshu Goyal for R-6

APL NO. 209 OF 2020 &
IA NO. 1618 OF 2020

Ramsons Castings Private Limited
A-301, Neeri Gaurav,
Central Bazar Road,
Ranrdaspeth, Nagpur 440010

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,

Through its Secretary,
World Trade Centre,
Centre No.1,13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

2. Maharashtra State Electricity Distribution Company Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.

...Respondent No.2

3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033

...Respondent No.3

4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021

...Respondent No.4

5. . Reliance Infrastructure Limited (Now Adani Electricity Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708

...Respondent No.6

Counsel for the Appellant (s) : Ms. DipaliSheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. PratitiRungta for R-1

Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora
Mr. Himanshu Goyal for R-6

APL NO. 210 OF 2020 &
IA NO. 1601 OF 2020

Pudumjee Paper Products Limited
Theragaon, Chinchwad,
Pune-411033

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.

...Respondent No.2

3. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,

Hyderabad – 500033

...Respondent No.3

4. Tata Power Company Limited (TPC),
Through its Chairman and Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021

...Respondent No.4

5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Centre (MSLDC),
Through its Chairman and Managing Director,
Thane-Belapur Road, P.Q. Airoli,
Navi Mumbai – 400708

...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Rahul Sinha
Mr. Samir Malik for R-2/
MSEDCL

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora

Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-6

APL-211/2020 & IA-1673/2020

Lupin Limited
Through Authorized Representative
Kalpataru Inspire, 3rd Floor
Off Western Express Highway
Santacruz (E), Mumbai – 400 055

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director
5th Floor, Prakashgad, Plot No. G-9
Bandra (East)
Mumbai – 400 051
...Respondent No.2
3. Sai Wardha Power Generation Limited
(Previously Sai Wardha Power Limited)
Through its Director
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
...Respondent No.3
4. Maharashtra State Load Despatch Center,
Through its Chairman & Managing Director
Thane–Belapur Road, P. Q. Airoli,
Navi Mumbai – 400 708, Maharashtra.
...Respondent No.4
5. The Tata Power Company Limited
Through its Chairman & Managing Director
Backbay Receiving Station
148 Lt. Gen. J Bhonsale Marg
Nariman Point, Mumbai – 400 021
...Respondent No.5

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv
Ms. Divya Chaturvedi
Mr. Sanjeev K. Kapoor

Mr. Saransh Shaw
Ms. Srishti Rai

Counsel for the Respondent(s) : Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Samir Malik
Mr. Rahul Sinha for MSEDCL

Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ashwin Ramanathan for R-3

Mr. Akshay Arora,
Mr. Praval Arora,
Ms. Chesta Mehta Arora,
Mr. Jappanpreet Hora for R-4

Mr. Anand Kumar Shrivastava
Mr. Shivam Sinha
Mr. Rahul Jajoo
Ms. Garima Singh for R-5

APL NO. 219 OF 2020 &
IA NO. 1663 OF 2020

AYM Syntex Limited
Survey No. 394(P), Saily, Silvassa,
Union Territory of Dadra & Nagar Haveli,
Pin Code 396230, India

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director
5th Floor, Prakashgad, Plot No. G-9
Anant Kanekar Marg, Bandra (East)
Mumbai – 400 051, Maharashtra

...Respondent No.3

3. Sai Wardha Power Generation Limited
Through its Director
8-2-293/82/A/431/A

Road No.22, Jubilee Hills
Hyderabad – 500 033

...Respondent No.2

4. The Tata Power Company Limited (TPC)
Through its Chairman and Managing Director
Backbay Receiving Station
148 Lt. Gen. J Bhonsale Marg
Nariman Point, Mumbai – 400 021

...Respondent No.4

5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710

...Respondent No.5

6. Maharashtra State Load Despatch Center,
Through its Chairman and Managing Director,
Thane–Belapur Road, P.Q. Airoli,
Navi Mumbai – 400 708, Maharashtra.

...Respondent No.6

Counsel for the Appellant (s) : Ms. Dipali Sheth
Mr. Keyur Talsania

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anirudh Bhakru
Mr. Rahul Sinha
Mr. Samir Malik for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for Sai Wardha Power Ltd

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora

APL-221/2020 & IA-1687/2020

ACG Associated Capsules Private Limited
Through its Senior Manager – Engineering Services
131, Kandivali Industrial Estate,
Charkop, Kandivali West, Mumbai – 400 067

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited
Through its Managing Director
5th Floor, Prakashgad, Plot No. G-9
Anant Kanekar Marg, Bandra (East)
Mumbai – 400 051, Maharashtra
...Respondent No.3
3. Sai Wardha Power Generation Limited
Through the Resolution Professional / Director,
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033
...Respondent No.2
4. The Tata Power Company Limited (TPC)
Through its Chairman and Managing Director
Backbay Receiving Station
148 Lt. Gen. J Bhonsale Marg
Nariman Point, Mumbai – 400 021
...Respondent No.4
5. Reliance Infrastructure Limited (Now Adani Electricity
Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710
...Respondent No.5
6. Maharashtra State Load Despatch Center,
Through its Chairman and Managing Director,
Thane–Belapur Road, P.Q. Airoli,
Navi Mumbai – 400 708, Maharashtra.
...Respondent No.6

Counsel for the Appellant (s) : Mr. Abhijeet Swaroop

Mr. Tabrez Malawat
Mr. Vinam Gupta
Ms. Ankita Bafna
Mr. Gibran Naushad

Counsel for the Respondent (s):

Mr. S.K. Rungta, Sr. Adv.
Ms. Pratiti Rungta for R-1

Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Ms. Rimali Batra for MSEDCL

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki
for *Sai Wardha Power Ltd*

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-6

APL NO. 222 OF 2020 & IA NO. 1690 OF 2020

ACG Associated Capsules Private Limited
Through its Senior Manager – Engineering Services
131, Kandivali Industrial Estate,
Kandivali West, Mumbai
Maharashtra – 400 067

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai-400005

...Respondent No.1

2. Maharashtra State Electricity Distribution Company Limited
Through its Managing Director
5th Floor, Prakashgad, Plot No. G-9
Anant Kanekar Marg, Bandra (East)
Mumbai – 400 051, Maharashtra ...Respondent No.3
3. Sai Wardha Power Generation Limited
Through its Director
8-2-293/82/A/431/A
Road No.22, Jubilee Hills
Hyderabad – 500 033 ...Respondent No.2
4. The Tata Power Company Limited (TPC)
Through its Chairman and Managing Director
Backbay Receiving Station
148 Lt. Gen. J Bhonsale Marg
Nariman Point, Mumbai – 400 021 ...Respondent No.4
5. Reliance Infrastructure Limited (Now Adani Electricity Mumbai Ltd. – AEML),
Through its Chairman and Managing Director,
H Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710 ...Respondent No.5
6. Maharashtra State Load Despatch Center,
Through its Chairman and Managing Director,
Thane–Belapur Road, P.Q. Airoli,
Navi Mumbai – 400 708, Maharashtra. ...Respondent No.6

Counsel for the Appellant (s) : Mr. Abhijeet Swaroop
Mr. Tabrez Malawat
Mr. Vinam Gupta
Ms. Ankita Bafna
Mr. Gibran Naushad

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Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anirudh Bhakru
Mr. Rahul Sinha
Mr. Samir Malik for R-2

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki

for Sai Wardha Power Ltd

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-6

APL NO. 231 OF 2020 &
IA NO. 1708 OF 2020

1. Mahindra and Mahindra Limited
Through Authorised Signatory
Mr. Rajeev Goyal
Having its registered office at:
Gateway Building, Apollo Bunder,
Mumbai 400001, Maharashtra.
....Appellant No.1
2. Mahindra Vehicle Manufacturers Limited
Through Authorised Signatory
Mr. Chandrakant Kadara
Having its registered office at
Mahindra Towers, P.K. Kurne Chowk,
Worli, Mumbai- 400018,
Maharashtra.
....Appellant No.2

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.
...Respondent No.1
2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.
...Respondent No.2

3. Tata Power Co. Ltd.- Distribution
Through its Director
Bombay House 24, HomiMody Street
Mumbai - 400 001, INDIA. ...Respondent No.3
4. Adani Electricity Mumbai Limited
(Formerly Reliance Infrastructure Ltd)
Through its Director,
1st Floor, Devidas Lane, Off. S.V. Road,
Near Devidas Lane Telephone Exchange,
Borivali (West), MUMBAI 400 103. ...Respondent No.4
5. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad - 500033 ...Respondent No.5

Counsel for the Appellant (s) : Mr. K R Sasiprabhu for A-1
Mr. Vishnu Sharma for A-1

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
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Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anirudh Bhakru
Mr. Rahul Sinha
Mr. Samir Malik for R-2/
MSEDCL

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-3

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki for R-5

APL NO. 232 OF 2020 &
IA NO. 1712 OF 2020

1. Mahindra and Mahindra Limited
Through Authorised Signatory

Mr. Rajeev Goyal
Having its registered office at:
Gateway Building, Apollo Bunder,
Mumbai 400001, Maharashtra.

....Appellant No.1

2. Mahindra Vehicle Manufacturers Limited
Through Authorised Signatory
Mr. Chandrakant Kadara
Having its registered office at
Mahindra Towers, P.K. Kurne Chowk,
Worli, Mumbai- 400018,
Maharashtra.

....Appellant No.2

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1,13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.
2. Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.
3. Tata Power Co. Ltd.- Distribution
Through its Director
Bombay House 24, HomiMody Street
Mumbai - 400 001, INDIA.

...Respondent No.1

...Respondent No.2

...Respondent No.3

4. Adani Electricity Mumbai Limited
(Formerly Reliance Infrastructure Ltd)
Through its Director,
1st Floor, Devidas Lane, Off. S.V. Road,
Near Devidas Lane Telephone Exchange,
Borivali (West), MUMBAI 400 103.

...Respondent No.4

5. Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad - 500033

...Respondent No.5

Counsel for the Appellant (s) : Mr. K R Sasiprabhu for A-1
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Mr. Rahul Sinha
Mr. Samir Malik for R-2/
MSEDCL

Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-3

Mr. Anand K. Ganesan
Mrs. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Damodar Solanki for R-5

APL NO. 9 OF 2021 &
IA NO. 1809 OF 2020

Hindustan Petroleum Corporation Limited
Through it's Authorized Representative,
Mr. P. V. Bole
HPCL Mumbai Refinery,
Mahul, Mumbai - 400074

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission
Through it's Secretary
World Trade Centre, Centre No.1, 13th Floor
Cuffee Parade, Mumbai- 400005
...Respondent No.1
2. Maharashtra State Electricity Distribution
Company Limited
Through it's Directors
Plot No G-9, 5th Floor, Prakashgad,
Anant Kanekar Marg,
Bandra (East), Mumbai - 400051
...Respondent No.2
3. Adani Electricity Mumbai Limited- Distribution
Through it's Directors
CTS 407/A (New), 408 Old Village,
Eksar Devidas Lane, Off SVP Road,
...Respondent No.3

Borivali West, Mumbai - 400103

4. Tata Power Company Limited- Distribution
Through it's Directors
Bombay House,
24, HomiMody Street,
Fort, Mumbai - 400001
...Respondent No.4
5. Maharashtra State Load Dispatch Centre,
Through it's Directors
Kalwa, Thane - Belapur Road,
Airoli, Navi Mumbai - 400708
...Respondent No.5
6. Maharashtra State Electricity Transmission Company
Limited
Through it's Directors
'Prakashganga', MSETCL,
Plot No. C-19, E – Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400051
...Respondent No.6
7. Lupin Limited
Through it's Directors
2/A, Laxmi Towers, Bandra Kurla Complex,
Bandra West, Mumbai – 400051
...Respondent No.7
8. Mahindra Vehicle Manufacturers Limited
Through it's Directors
Mahindra Towers, P. K. Kurne Chowk,
Worli, Mumbai – 400018

P No. A-1, Phase IV, Chakan MIDC
Village – Nonhoje, Tal – Khed,
Dist Pune – 413 105
...Respondent No.8
9. Mahindra and Mahindra Limited
Through it's Directors
Gateway Building, Apollo Bunder,
Mumbai – 400001

Automotive Division, Akurli Road
Kandivili (East), Mumbai – 400 101
...Respondent No.9
10. Pudumjee Paper Products Limited
Through it's Directors
Thergaon, Chinchwad,
Pune – 411033
...Respondent No.10
11. Mahindra CIE Automotive Limited
Through it's Directors
Mahindra Towers, 1st Floor,

Dr. G. M. Bhosale Marg,
Worli, Mumbai – 400018

Mahindra CIE Automotive Limited
(Formerly Mahindra Forgings Limited)
602-603, Amar Business Park,
Opp. Sadanand Resort,
Baner Road, Pune – 411045

Mahindra CIE Automotive Limited
(Formerly Mahindra Hinoday Industries Limited)
GAT No.318, Urse Gaon,
Tal – Maval, Pune - 410506

...Respondent No.11

12. INOX Air Products Private Limited
Through it's Directors
7th Floor, Ceejay House,
Dr. Annie Besant Road,
Worli, Mumbai – 400018

...Respondent No.12

13. Mahindra Sanyo Special Steel Private Limited
Through it's Directors
74, Ganesh Apartment,
Lady Jamshedji Road,
Mahim (West), Mumbai – 400016

Mahindra Sanyo Special Steel Company Limited
(Formerly Mahindra Ugine Steel Limited)
74, Ganesh Apts, 7th Floor,
Opp. Sitala Devi Temple, Lady Jamshedji Road,
Mahim, Mumbai – 400016

...Respondent No.13

14. Bebitz Flanges Works (P) Limited
Through it's Directors
Survey No.140/2,
Saravali, Boisar, Dist. Thane - 401501

...Respondent No.14

15. Viraj Profiles Limited
Through it's Directors
Plot No.G2, MIDC
Tarapur, Boisar - 401502

Viraj Profiles Limited
Ground floor, Viraj Tower,
Western Express Highway,
Gundavali, Andheri (East), Mumbai – 400069

...Respondent No.15

16. Ramsons Industries Limited
Through it's Directors
1st Floor, Ramsons, 46,

- | | | |
|-----|---|---------------------|
| | Humpyard Road, Dhantoli,
Nagpur – 440012 | ...Respondent No.16 |
| 17. | Ramsons Castings Limited
Through it's Directors
1 st Floor, Ramsons, 46, Humpyard Road,
Dhantoli, Nagpur – 440012 | ...Respondent No.17 |
| 18. | Asahi India Glass Limited
Through it's Directors
Plot No. T-7, MIDC Industrial Area,
Taloja, Dist.: Raigad – 410208 | ...Respondent No.18 |
| 19. | ACG Associated Capsules Private Limited
Through it's Directors
131, Kandivali Industrial Estate,
Kandivali West, Mumbai – 400067 | ...Respondent No.19 |
| 20. | Graphite India Limited
Through it's Directors
Plot No.88, MIDC Industrial Area,
Satpur, Nashik – 422 2007 | ...Respondent No.20 |
| 21. | Facor Steel Limited
Through it's Directors
46(A&B), MIDC, Industrial Estate,
Hingna Road, Nagpur – 440028 | ...Respondent No.21 |
| 22. | Sona Alloys Pvt Limited
Plot No. C-1, MIDC G no.399/402,
407 to 417, 421 to 425,
Lonand, MIDC Dist. Sarara – 412801 | ...Respondent No.22 |
| 23. | R.L. Steel Private Limited
Through it's Directors
Gat No. 81 PangraSivar,
Chite, Paithan Road,
Paithan, Aurangabad – 431000 | ...Respondent No.23 |
| 24. | India Steels Works Limited
Through it's Directors
C 63, MIDC Estate,
Turbhe, Navi Mumbai-400705 | ...Respondent No.24 |
| 25. | Air Liquid India Holding Private Limited
Through it's Directors
A-24/9, Mohan Co-operative,
Mathura Road, New Delhi -110044 | ...Respondent No.25 |
| 26. | Orchid Chemicals and Pharmaceuticals Limited | |

- Through it's Directors
Plot No. L 8, MIDC Industrial Area,
Waluj, Aurangabad - 431133 ...Respondent No.26
27. Spentex Industries Limited
Through it's Directors
A-60, Okhla Industrial Area,
Phase II, New Delhi-100020 ...Respondent No.27
28. Hindalco Industries Limited
Through it's Directors
Plot.No.2, Taloja MIDC,
Raigad – Dist, Navi Mumbai – 410208 ...Respondent No.28
29. Mahalaxmi TMT Private Limited
Through it's Directors
Plot No.C2, MIDC Deoli,
Wardha - 442101 ...Respondent No.29
30. Bekaert Industries Private Limited
Through it's Directors
B-1, MIDC Ranjangaon,
Taluka Sishir, Pune,
Maharashtra- 412220 ...Respondent No.30
31. Owens Corning India Ltd.
Through it's Directors
701, 7th Floor, Alpha Building,
Hiranandani Gardens,
Pawai, Mumbai – 400076 ...Respondent No.31
32. AYM Sysntex Limited
Through it's Directors
Survey No.394 (P), Saily,
Silvassa,
Union Territory of Dadra & Nagar Haveli - 396240 ...Respondent No.32
33. Bharat Petroleum Corporation Limited
Through it's Directors
BPCL Mumbai Refinery,
Mahul, Mumbai – 400074 ...Respondent No.33
34. Sai Wardha Power Generation Limited,
Through its Director,
8-2-239/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad - 500033 ...Respondent No.34

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MSEDCL

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Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-5

Mr. Anand K. Ganesan
Mr. Ashwin Ramanathan
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Mr. Rohit Singha
Mr. Nikhil Rawat for R-14&15

APL NO. 10 OF 2021 &
IA NOS. 1762 OF 2020

Hindustan Petroleum Corporation Limited
Through it's Authorized Representative,
Mr. P.V. Bole
HPCL Mumbai Refinery,
Mahul, Mumbai - 400074

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission
Through it's Secretary
World Trade Centre, Centre No.1,
13th Floor Cuffee Parade,
Mumbai- 400005

...Respondent No.1

2. Maharashtra State Electricity

- Distribution Company Limited
Through it's Directors
Plot No G-9, 5thFloor,Prakashgad,
Anant Kanekar Marg,
Bandra (East), Mumbai - 400051
...Respondent No.2
3. Adani Electricity Mumbai Limited- Distribution
Through it's Directors
CTS 407/A (New), 408 Old Village,
EksarDevidas Lane, Off SVP Road,
Borivali West, Mumbai - 400103
...Respondent No.3
4. Tata Power Company Limited- Distribution
Through it's Directors
Bombay House,
24, HomiMody Street,
Fort, Mumbai - 400001
...Respondent No.4
5. Maharashtra State Load Dispatch Centre,
Through it's Directors
Kalwa, Thane - Belapur Road,
Airoli, Navi Mumbai - 400708
...Respondent No.5
6. Maharashtra State Electricity Transmission
Company Limited
Through it's Directors
'Prakashganga', MSETCL,
Plot No. C-19, E – Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400051
...Respondent No.6
7. Lupin Limited
Through it's Directors
2/A, Laxmi Towers, Bandra Kurla Complex,
Bandra West, Mumbai – 400051

Kalpataru Inspire, 3rd Floor
Off Western Express Highway
Opp. Grand Hyatt, Santacruz (East)
Mumbai – 400 055
...Respondent No.7
8. Mahindra Vehicle Manufacturers Limited
Through it's Directors
Mahindra Towers, P. K. Kurne Chowk,
Worli, Mumbai – 400018
...Respondent No.8
9. Mahindra and Mahindra Limited
Through it's Directors
Gateway Building, Apollo Bunder,
Mumbai – 400001
...Respondent No.9

10. Pudumjee Paper Products Limited
Through it's Directors
Thergaon, Chinchwad,
Pune - 411033
...Respondent No.10

11. Mahindra CIE Automotive Limited
Through it's Directors
Mahindra Towers, 1st Floor,
Dr. G. M. Bhosale Marg,
Worli, Mumbai – 400018

Mahindra CIE Automotive Limited
(Formerly Mahindra Forgings Limited)
602-603,Amar Business Park,
Opp. Sadanand Resort,
Baner Road, Pune - 411045

Mahindra CIE Automotive Limited
(Formerly Mahindra Hinoday Industries Limited)
GAT No.318, Urse Gaon,
Tal - Maval, Pune - 410506
...Respondent No.11

12. INOX Air Products Private Limited
Through it's Directors
7th Floor, Ceejay House,
Dr. Annie Besant Road,
Worli, Mumbai – 400018
...Respondent No.12

13. Mahindra Sanyo Special Steel Private Limited
Through it's Directors
74, Ganesh Apartment,
Lady Jamshedji Road,
Mahim (West), Mumbai – 400016

Mahindra Sanyo Special Steel Company Limited
(Formerly Mahindra Ugine Steel Limited)
74, Ganesh Apts, 7th Floor,
Opp. Sitala Devi Temple, Lady Jamshedji Road,
Mahim, Mumbai - 400016
...Respondent No.13

14. Bebitz Flanges Works (P) Limited
Through it's Directors
Survey No.140/2,
Saravali, Boisar, Dist. Thane - 401501
...Respondent No.14

15. Viraj Profiles Limited
Through it's Directors
Plot No.G2, MIDC
Tarapur, Boisar - 401502

- Viraj Profiles Limited
Ground floor, Viraj Tower,
Western Express Highway,
Gundavali, Andheri (East), Mumbai – 400069
- Western Express Highway
Gundavali, Andheri (East)
Mumbai – 400 069 ...Respondent No.15
16. Ramsons Industries Limited
Through it's Directors
1st Floor, Ramsons, 46,
Humpyard Road, Dhantoli,
Nagpur – 440012 ...Respondent No.16
17. Ramsons Castings Limited
Through it's Directors
1st Floor, Ramsons, 46, Humpyard Road,
Dhantoli, Nagpur - 440012 ...Respondent No.17
18. Asahi India Glass Limited
Through it's Directors
Plot No. T-7, MIDC Industrial Area,
Taloja, Dist.: Raigad - 410208 ...Respondent No.18
19. ACG Associated Capsules Private Limited
Through it's Directors
131, Kandivali Industrial Estate,
Kandivali West, Mumbai - 400067 ...Respondent No.19
20. Graphite India Limited
Through it's Directors
Plot No.88, MIDC Industrial Area,
Satpur, Nashik - 422 2007 ...Respondent No.20
21. Facor Steel Limited
Through it's Directors
46(A&B), MIDC, Industrial Estate,
Hingna Road, Nagpur – 440028 ...Respondent No.21
22. Sona Alloys Pvt Limited
Through it's Directors
Plot No. C-1, MIDC G no.399/402,
407 to 417, 421 to 425,
Lonand, MIDC Dist. Sarara – 412801 ...Respondent No.22
23. R.L. Steel Private Limited
Through it's Directors
Gat No. 81 PangraSivar,
Chite, Paithan Road, ...Respondent No.23

Paithan, Aurangabad – 431000

24. India Steels Works Limited
Through it's Directors
C 63, MIDC Estate,
Turbhe, Navi Mumbai-400705
...Respondent No.24
25. Air Liquid India Holding Private Limited
Through it's Directors
A-24/9, Mohan Co-operative,
Mathura Road, New Delhi -110044
...Respondent No.25
26. Orchid Chemicals and Pharmaceuticals Limited
Through it's Directors
Plot No. L 8, MIDC Industrial Area,
Waluj, Aurangabad - 431133
...Respondent No.26
27. Spentex Industries Limited
Through it's Directors
A-60, Okhla Industrial Area,
Phase II, New Delhi-100020
...Respondent No.27
28. Hindalco Industries Limited
Through it's Directors
Plot.No.2, Taloja MIDC,
Raigad – Dist, Navi Mumbai - 410208
...Respondent No.28
29. Mahalaxmi TMT Private Limited
Through it's Directors
Plot No.C2, MIDC Deoli,
Wardha - 442101
...Respondent No.29
30. Sai Wardha Power Generation Limited,
Through its Director,
8-2-239/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad - 500033
...Respondent No.30

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Ms. Nikita Choukse
Ms. Rimali Batra for R-2/
MSEDCL

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia
Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-5

Mr. Rohit Singha
Mr. Nikhil Rawat for R-14&15

Mr. Anand K. Ganesan
Mr. Ashwin Ramanathan
for *Sai Wardha Power Ltd*

APL-12/2021 & IA-1849/2020

Hindalco Industries Limited
Plot.No.2, Taloja MIDC,
Raigad – Dist, Navi Mumbai - 410208

....Appellant(s)

Versus

Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1,13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

Maharashtra State Electricity Distribution Company
Limited,
Through its Managing Director,
Plot No. G-9, Prakashgad,
Bandra (East),
Mumbai – 400 051.

...Respondent No.2

Sai Wardha Power Generation Limited,
Through its Director,
8-2-293/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033

...Respondent No.3

Tata Power Company Limited (TPC),
Through its Managing Director,
Backbay Receiving Station,
148 Lt. Gen. J. Bhonsale Marg,
Nariman Point, Mumbai – 400021

...Respondent No.4

Counsel for the Appellant (s)	:	Mr. Arpan Behl Mr. Zain Maqbool
Counsel for the Respondent (s):		Mr. S.K. Rungta, Sr. Adv. Ms. Pratiti Rungta for R-1 Mr. Rahul Sinha Ms. S. Rama for R-2/ MSEDCL Mr. Anand Kumar Shrivastava Ms. Shruti Kanodia Mr. Shivam Sinha Ms. Anandini Sood Mr. Chandrika Bhadu Mr. Nilesh Panda Mr. Rahul Jajoo Ms. Garima Singh for R-4

**APL-97/2021 & IA-278/2021, IA-280/2021,
IA-281/2021 & IA-1379/2021**

Bharat Petroleum Corporation Limited
Through its Directors
BPCL Mumbai Refinery
Mahul, Mumbai – 400 074

....Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
Through its Secretary,
World Trade Centre,
Centre No.1, 13th Floor, Cuffe Parade,
Colaba, Mumbai - 400005.

...Respondent No.1

2. Maharashtra State Electricity Distribution Company
Limited,
Through its Director,

Plot No. G-9, 5th Floor,
Prakashgad, Bandra (East),
Mumbai – 400 051.

...Respondent No.2

3. Adani Electricity Mumbai Limited- Distribution
Through it's Directors
CTS 407/A (New), 408 Old Village,
EksarDevidas Lane, Off SVP Road,
Borivali West, Mumbai – 400 103

...Respondent No.3

4. Tata Power Company Limited - Distribution
Through it'sDirectors
Bombay House, 24 Homi Modi Street
Fort, Mumbai – 400 001

...Respondent No.4

5. Maharashtra State Load Despatch Centre (MSLDC),
Through its Directors,
Kalwa, Thane – Thane-Belapur Road,
P.Q. Airoli, Navi Mumbai – 400708

...Respondent No.5

6. Maharashtra State Electricity Transmission Company
Limited
Through it's Directors
'Prakashganga', MSETCL,
Plot No. C-19, E – Block, Bandra Kurla Complex,
Bandra (East), Mumbai – 400051

...Respondent No.6

7. Sai Wardha Power Generation Limited,
Through its Directors,
8-2-239/ 82/ A/ 431/ A,
Road No.22, Jubilee Hills,
Hyderabad – 500033

...Respondent No.7

Counsel for the Appellant (s) : Ms. Sowmya Saikumar

Counsel for the Respondent (s): Mr. S.K. Rungta, Sr. Adv.
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Mr. Basava Prabhu Patil, Sr. Adv.
Mr. Anirudh Bhakru
Mr. Rahul Sinha
Mr. Samir Malik for R-2/
MSEDCL

Mr. Anand Kumar Shrivastava
Ms. Shruti Kanodia

Mr. Shivam Sinha
Ms. Anandini Sood
Mr. Chandrika Bhadu
Mr. Nilesh Panda
Mr. Rahul Jajoo
Ms. Garima Singh for R-4

Mr. Akshay Arora
Mr. Praval Arora
Ms. Chesta Mehta Arora
Mr. Jappanpreet Hora for R-5

JUDGMENT

PER MR. RAVINDRA KUMAR VERMA, CHAIRPERSON (OFFICIATING)

1. This is a batch of 39 appeals. These appeals have been filed by the Generator, DISCOMS and captive users. These appeals cover four financial years i.e. 2014-15, 2015-16, 2016-17 and 2017-18.
2. The main issue in these appeals is in respect of determination of captive status of Group Captive Power Plant wherein the obligation of consumers are as specified in Section 9 of the Electricity Act, 2003 ("EA 2003") read with Rule 3 of the Electricity Rules, 2005 ("Electricity Rules"). The captive consumers are required to hold 26% shares in the SPV and consume 51% of the power generated by the identified CPP units.
3. Sai Wardha Power General Limited (SWPGL) is a generating company having an installed capacity of 4X135 MW.
4. Maharashtra State Electricity Distribution Corporation Limited (MSEDCL) and Tata Power Company Limited (TPCL) are the

distribution licensees operating in the State of Maharashtra in terms of the license granted to them by the State Commission/ MERC. Maharashtra Electricity Regulatory Commission (MERC) is a statutory body created under the Electricity Act, 2003.

5. That these appeals could be divided into following seven sets of appeal as under:

- I. *Appeal No.234/2018 filed by TPC(D) (Distribution licensee) Against order Dt. 9.2.18 and Corrigendum Order Dt. 12.3.2018* passed in case No.77/2015 declaring that Units 3 & 4 of Sai Wardha qualifies as captive units for the financial year 2014-15 and therefore Sai Wardha's captive consumers were entitled to the exemption from payment of CSS.
- II. ***Appeal No.340/2018 and batch of appeals filed by SWPGL(Generator) and captive consumers of SWPGL challenging review order dt.22.10.2018 in case No.132/2018 partially allowing the review of main order dt. 9.2.2018 & 12.3.2018*** affording an opportunity to MSEDCL and other distribution licensees to obtain the authenticated data from MSLDC and SWPGL and examine the same for determination of captive status of SWPGL for the financial year 2014-15.
- III. ***Appeal No.205/2018 filed by TPC-D (distribution licensee) challenging the main order dt.19.3.2018 in case No.159/2016*** whereby the commission declared that Units 3 & 4 of Sai Wardha qualifies as captive units for the financial year 2015-16 and therefore Sai Wardha's captive consumers were entitled to the exemption from payment of CSS.

- IV. ***Appeal No.106/2018 filed by SWPGL (Generator) challenging the main order dt.19.3.2018 in case No.159/2016*** limited to the extent that the commission declared 56.63 MUs to be unscheduled supply as the same was injected from IPP Units 1 & 2 and accordingly held that the power drawn by the captive consumers to that extent is deemed to have been drawn from respective distribution licensees with consequential implications as per applicable provisions of EA, 2003 and relevant rules and relevant regulations.
- V. ***Appeal No.341/2018 and batch of appeals filed by SWPGL(Generator) and its captive consumers challenging review order dt.22.10.2018 in case No.133/2018 partially allowing the review of main order dt. 19.3.2018 in case No.159/2016*** in view of the difference in the data relied upon by the commission pertaining to supply of electricity to captive consumers from IPP Units 1 & 2 and data derived by MSEDCL with a direction to MSEDCL with active engagement of TPC-D and other distribution licensees to obtain the authenticated data from MSLDC and SWPGL and re-examine the same for determination of captive status of SWPGL for the financial year 2015-16.
- VI ***Appeal No. 196/2020 and batch of appeals filed by captive consumers challenging order dated 22.10.2020 in case No.175/2017*** whereby the State Commission has held that unit no. 3&4 of SWPGL do not qualify to be a captive generating plant (CGP) for the FY 2016-17 as proportionality has not been

met by all the captive consumers (para 69 TO 83 of Impugned Order)

VII ***Appeal No. 198/2020 and batch of appeals filed by captive consumers challenging order dated 29.10.2020 in case No.170/2017*** whereby the State Commission has held that unit no. 3&4 of SWPGL do not qualify to be a captive generating plant (CGP) for the FY 2017-18 as proportionality has not been met by all the captive consumers (para 53 to 66 of Impugned Order).

6. Since the issues raised in the appeal are regarding the determination of captive status of unit no. 3 and 4 of SWPGL, a common judgment is being passed in respect of all the 37 appeals.

Submissions of the learned counsel Mr. Anand K. Ganesan arguing for Sai Wardha Power Generation Limited in Appeal No 106 of 2018, Appeal No. 340 of 2018 and Appeal No. 341 of 2018

7. **Impugned Order:** The Appeal has been filed against order dated 22.10.2018 passed by the Maharashtra Electricity Regulatory Commission in Case No. 132 of 2018. Case No. 132 of 2018 had been filed by MSEDCL seeking review of order dated 09.02.2018 and Corrigendum Order dated 12.03.2018 in Case No. 77 of 2015.
8. **Nature of Order:** The State Commission by the impugned order has partially allowed the Petition filed by MSEDCL, on the following two grounds:

1. Alleged breach of principles of natural justice, in view of the email dated 17.01.2018 by MSLDC not being served upon the parties.
 2. Alleged shortcomings on part of the Appellant in the process of determination of Captive Status.
-
9. By the Order dated 09.02.2018 and Corrigendum Order dated 12.03.2018 in Case No. 77 of 2015, the State Commission declared the captive status of the Appellant for the year 2014-15. The above order was passed in the petition filed by the Appellant seeking declaration of the captive status, after hearing all the parties and considering all the relevant data filed on record. There is a categorical finding of the captive status of the Appellant for the year 2014-15.
 10. In the impugned order, there is no finding that the Appellant is not captive for the year 2014-15. However, the State Commission has directed the Respondent No. 2, MSEDCL to give a finding on the captive status of the Appellant. This is a procedure unknown to law, as detailed hereunder.
 11. The impugned Order has been passed by the State Commission without appreciating the limited and narrow scope of review.
 12. The issue that arise in the present case is whether the State Commission was justified in exercising review jurisdiction, which is very limited in nature.

13. It is submitted that a review order is liable to be set aside if it is found that it exceeds the review jurisdiction, which is settled to be extremely limited. The Appellant craves leave to place reliance on the following Judgments of the Hon'ble Supreme Court:

a. Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715

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

10. Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. The observations of Sharma, J. that “accordingly, the order in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunctions were provided” and as such the case was covered by Article 182 and not Article 181 cannot be said to fall within the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be

corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25-4-1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which was not of such a nature, “which had to be detected by a long-drawn process of reasons” and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment-debtors could have approached the higher forum through appropriate proceedings to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a “review” of the order of Gupta, J. on the grounds detailed in the review petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and we accordingly accept this appeal and set aside the impugned order dated 6-3-1997.

b. N. Anantha Reddy v. AnshuKathuria, (2013) 15 SCC 534:

“6. A careful look at the impugned order would show that the High Court had a fresh look at the question whether the appellant could be impleaded in the suit filed by Respondent

1 and, in the light of the view which it took, it recalled its earlier order dated 8-6-2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order dated 8-6-2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self-evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.”

14. In the impugned order, the State Commission while rejecting other grounds, partially allowed the Petition in Case No. 132 of 2018 on the following two grounds:

- i. Ground for Review I: The order dated 09.02.2018 and Corrigendum Order dated 12.03.2018 is based on the data provided by MSLDC vide email dated 17.01.2018 which needs to be considered by the parties and therefore the review was maintainable.
- ii. Ground for Review II: That on the issue of injection of power from Units No. 1 and 2 (non-CPP units), since the quantum was based on the data provided by MSLDC vide email dated 17.01.2018, the parties could not make submissions on the same.

- iii. Ground for Review III: Alleged shortcomings on the part of the Appellant in establishing its captive status. While doing so, the State Commission has however without giving any new reasoning whatsoever has considered the matter for review. This is while the main order on the very same facts and issues, and with detailed reasoning decides the captive status. In fact, the main order made observations for shortcomings on part of all parties, which is completely ignored in the impugned order.
15. In addition, on the issue of shareholding of one consumer, M/s Sona Alloys, the State Commission has not reviewed the main order, but directed the Appellant to provide to MSEDCL the date when the shareholding of M/s Sona Alloys changed.
16. The first two grounds stated hereinabove, relate to the opportunity not being granted to the Respondents to make submissions on the MSLDC data, while the third ground relates to alleged shortcomings on part of the Appellant.
17. The State Commission has rejected the Review petition filed by MSEDCL on the issue of 15 minute time block SEM meters were not available. The State Commission has held that the same methodology as followed for the previous years was followed and there was no error apparent on the face of the record.
18. While the Appellant submits that the impugned order is vitiated as being beyond the scope of review, the State Commission has

further directed MSEDCL to re-examine the captive status of the Appellant.

19. This is despite the fact that it is settled law that the jurisdiction to determine the captive status is that of the State Commission and the said status already stands determined. (Ref: Chhattisgarh State Power Distribution Co Ltd v. Hira Ferro Alloys Ltd, Appeal No. 116 of 2009 dated 18.05.2010).
20. In the order dated 09.02.2018, the State Commission has examined the matter in detail and has come to the conclusion that the captive status is achieved. The captive status has been declared by the State Commission. In the impugned order, there is no finding that the captive status is not achieved, however the State Commission has permitted MSEDCL to examine the captive status which is untenable in law.
21. The submissions of the Appellant on the specific issues raised are as under:

Re: Alleged violation of principles of natural justice

22. In the proceedings before the State Commission in Case No. 77 of 2015 for determination of Captive Status of the Appellant for FY 2014-15, there were various issues raised during the course of proceedings in relation to the required metering data not being available. In this regard, the State Commission observed that all the parties concerned did not undertake unit wise meter readings

during the year. The State Commission in the order dated 09/02/2018 held as under:

“20. The Respondents have also raised the issue of availability of certified data of generation from all the SWPL Units from MSLDC and other relevant data mentioned earlier in this Order. This data is critical for establishing compliance with the CGP requirements of the Electricity Rules, 2005 by SWPL.

21. Hence, the Commission had directed MSLDC vide its Daily Order dated 23 February, 2017 to provide the certified data, but TPC-D submitted on 29 May, 2017 that MSLDC had not provided it. Subsequently, MSLDC submitted the energy injection data at the 220 KV Warora Lines I and II for FY 2014-15 as per ABT meter data. However, the GT wise ABT data was not available.

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

23. TPC-D has also contended that, in its affidavit in Case No. 62 of 2017, SWPL has also admitted that it does not have details of the Net Generation from each of its 4 Units (CGP and non-CGP) since it had not downloaded and maintained a record of the Unit wise generation for the

period May, 2014 to 28 July, 2017 (i.e. around 3 years). Thus, SWPL has itself admitted that, till April, 2014, the Unit-wise generation data was being downloaded and taken by MSLDC for each of the Generating Units. This practice was, however, discontinued from June, 2014. The Commission cannot understand why the established and proper practice of taking monthly metered data of every Unit was stopped from June, 2014. No explanation has been attempted by SWPL, MSLDC or the Distribution Licensees.

24. At the hearing held on 23 February, 2017, SWPL stated that it had supplied power from its non-CGP Units 1 and 2 to the Captive Users during outages of the CGP Units and, to that extent, no captive status is claimed. It had already excluded the energy supplied to Captive Users from these Units. SWPL or its Captive Users would pay the CSS for this consumption. However, for best reasons known to it, SWPL has not provided the quantum of such power or details of tripping of its CGP Units. Moreover, as explained subsequently in this Order, this statement of SWPL appears to be without basis.

25. The Commission finds it surprising that, although issues regarding the Group Captive status of Generators have been regularly raised for some years now, none of those concerned - SWPL, MSLDC or the Distribution Licensees – could provide the data necessary for determining the captive status of Units 3 and 4 of SWPL for FY 2014-15. Hence, the Commission sought data on the generation schedules of

these Units and the data on trippings in respect of all four Units from MSLDC. Based on the data provided by MSDLC vide its e-mail dated 17 January, 2018 and the submissions made by SWPL, the Commission notes the following, which is of relevance to the determination of the CGP status of Units 3 and 4 in FY 204-15:

...

23. In the above circumstances, the State Commission sought data on generation schedules of the units of the Appellant, and the data on trippings in respect of all four units from MSLDC. The said data was provided on 17.01.2018, which is the subject matter of review.
24. SLDC is a statutory authority and has only provided the certified data. The SLDC is neither a contesting party nor an interested party to the dispute between the parties. Further, the SLDC also does not make any submissions on the issue.
25. Further, the State Commission is required to take an informed decision and make a determination. The matter is not a mere lis between two parties. The TSate Commission is entitled to take the certified data from the SLDC which is a statutory authority and make the determination.
26. It is relevant to mention that the SLDC data is only used as an excuse by MSEDCL to re-examine the issue, which re-examination has no co-relation to the SLDC data. In this regard, MSEDCL has by its communication dated 07/01/2019 come to the conclusion that the captive status is not achieved. In this conclusion, there is no

reference to the certified data made available by the SLDC vide its communication dated 17/01/2018 to the State Commission. However, the primary reason for the review was that since the 17/01/2018 filing of SLDC was not available, the order is to be reviewed.

27. This itself establishes that there is no merit in the review petition filed by MSEDCL on the SLDC data made available on 17/01/2018.

28. The State Commission has in the order dated 09.02.2018 held as under:

“ ...

i. *As per the generation details submitted by SWPL, set out at Table 7 of this Order, Unit 1 was operational only in October, 2014; Unit 2 was not in operation during the entire year. These were both non-CGP Units.*

ii. *This is corroborated by the tripping data for these non-CGP Units provided by MSLDC in the Table below:*

...

iii. *Table 11 shows that Unit 1 of SWPL was under outage from 30 January, 2014 till 9 October, 2014. After synchronizing with the grid for less than a day, it tripped again on 10 October, 2014 for a few hours and was then synchronized at 11:56 am on the same day. Unit 1 continued operations till 30 October, 2014, when it again tripped and the outage continued till the end of FY 2014-15. Thus, the nonCGP Unit 1 was operational*

only for around 21 days in 2014-15, while Unit 2 was not in operation at all.

- iv. MSLDC has also provided the following outage information of CGP Units 3 and Unit 4:

...

- v. Thus, CGP Units 3 and 4 were also under outage for some time in October, 2014, while Unit 1 was in operation during a part of that month. The Commission has sought to correlate the period during which the CGP Units 3 and/or 4 were under outage and the non-CGP Unit 1 was in operation.
- vi. The Commission notes that, even after considering the outage periods of CGP Units 3 and 4 during October, 2014, their generation as submitted by SWPL was much higher than the captive consumption in that month (and thus there might have been no need to provide them power from non-CGP Unit 1 during its days of operation in October). This is also evident from the CGP generation and captive consumption data for that month shown in Table 4 earlier in this Order.
- vii. MSLDC has provided the month-wise daily schedule which shows that the total energy scheduled in FY 2014-15 was 1041.33 MUs. As against this, the net energy exported (SWPL has also imported 1.52 MUs from the grid) as submitted by SWPL in Table 7 is 1045.82 MUs. This net energy exported also nearly matches the power injected by SWPL at the inter-connection point (1045.84 MUs) as certified by MSLDC (Table 7 of this Order).

29. Further, from the certified tripping data made available by MSLDC, the State Commission has determined that Units-3 and 4 were under outage for certain period in October 2014. However, the State Commission has determined that even after considering the outage periods of CGP Units 3 and 4 during October, 2014, their generation was much higher than the captive consumption in that month.
30. This is not disputed by MSEDCL even as on date. Therefore, there was no question of there being a review entertained, which is only being used as an excuse for reopening other issues which have been settled by a considered decision.
31. In fact, even in the impugned order while reviewing the order dated 09.02.2018, it is not that the State Commission has held that the lack of unit-wise data, and injection from Unit-1 & 2 would vitiate the Captive Status of the Appellant. Had this been the case, the State Commission would not have sought for certified MSDLC data in the first place.
32. On the issue of alleged injection of power from non-captive units – 1 & 2 of the Appellant, the State Commission has merely held that since the determination was based on the SLDC data filed on 17/01/2018, MSEDCL is entitled to make submissions based on the SLDC data. The only liberty to MSEDCL was to make submissions, and not make any determination. The relevant portion of the impugned order reads as under:

“8.2.2 The Commission in the above paragraph of the impugned Order has provided its rationale on this issue,

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

33. The State Commission has not set aside its rationale for confirming the captive status of the Appellant.
34. The only issue in question is that relating the certified MSLDC data which has been considered by the State Commission for the purpose of quantification of generation and consumption by the Captive Units of the Appellant and the Captive users. It is not open for the Respondents to therefore now open other issues such as Captive Status of the Appellant which have not been disturbed in the Impugned Order.
35. As submitted hereinabove, MSLDC being a statutory authority with one of its functions of keeping accounts of all electricity that is transmitted through the State Grid. The MSLDC has only provided the certified factual data to the State Commission. There can be no question of any violation of natural justice on such data being considered by the State Commission.
36. It is submitted that while the Respondents can certainly not dispute that data provided by the MSDLC which is statutory and certified, the only issue (if at all) that could be raised by the Respondents on

the MSLDC data would be the manner of consideration of the same by the State Commission. In that case, none of the Respondents have actually made any submission in this regard. Even otherwise, the Captive Status of the Appellant cannot be affected.

37. Therefore, there was no question of any review on this ground.

Re: Alleged shortcomings on part of the appellant in the process of determination of captive status.

38. The State Commission in this regard has only partly reproduced and reiterated its observations of its earlier order, and on the very same facts, without giving any new reasoning or specifying any error apparent, has sought to deviate from its findings by allowing the review. The relevant portion of the impugned order reads as under:

“8.3.2 Considering the submissions of MSEDCL and also as is evident from the observations of the Commission reproduced in the para above, the Commission reiterates that there have been considerable shortcoming on the part of SWPL in the process of determination of the CGP status as stated in the above para. The Commission further notes that SWPL has not provided the quantum of power from IPP or details of tripping of its CGP Units and this data was critical for establishing compliance with the CGP requirements of the Electricity Rules, 2005. In view of the same, the Commission accepts the contention of MSEDCL on this ground and considers the matter for Review.”

39. The State Commission has not even specified the error apparent in this regard, for reviewing its earlier order, but has only partly reproduced its findings of the earlier order. Without there being any specific issue, the State Commission has held that the captive status is to be re-examined by MSEDCL.
40. The State Commission had in the main order dated 09.02.2018 and corrigendum order dated 12.03.2018 found shortcomings on all parties, namely the Appellant, the distribution licensees including MSEDCL and also MSLDC. Therefore, when there were shortcomings found on behalf of the distribution licensees including MSEDCL, the question of entertaining the review petition at the behest of MSEDCL does not arise.
41. It is submitted the issue of short-comings was primarily with regard to the unit wise metering data. The said issue is primarily attributable to the licensees. The unit wise meters have always been available and installed at the generating station of the Appellant. The meter readings were to be downloaded by the licensees/SLDC on a monthly basis. In fact, this was done by the licensees in the past till some time in 2013-14, but was discontinued for reasons for reasons best known to them. Thereafter, the meter readings were taken only at the sub-station level and not on unit wise-basis.
42. However, the tripping data for each unit is available with the SLDC and is certified for each year of operation.

43. The unit wise meters have the capability to store data for a period of 35 days. Therefore, data for the years 2014-15 and 2015-16 cannot be made available at this stage. It is for this reason that the SLDC certified data is used by the State Commission for generating unit trippings and injections.
44. Further, it is stated that the information as made available during the year 2013-14 was made available for the present year 2014-15 for the declaration of the captive status. The captive status for the year 2013-14 was determined by the State Commission on the very same information as available based on SLDC data, which determination has also been upheld by the Hon'ble Tribunal.
45. The principles and methodologies for determination and declaration of captive status have already been decided by the State Commission for the year 2013-14 by the order dated 20.08.2014. The said order was challenged by MSEDCL before the Hon'ble Tribunal in Appeal No. 252 of 2014, which appeal came to be dismissed by the Hon'ble tribunal. Therefore, it was erroneous for the State Commission to go behind its own previous orders as upheld by the Hon'ble tribunal in relation to the principles and methodologies to be applied for the determination of captive status.
46. The impugned order has been passed by the State Commission alleging shortcomings solely on the Appellant, in a vague manner and without any basis. The only short-coming alleged against the Appellant at this stage is non-availability of 15 minute time block metering data on unit wise basis.

47. On this specific aspect, the State Commission has in fact dismissed the review petition of MSEDCL. Having rejected the contention of MSEDCL on this specific aspect, there is no basis for any further examination to be done or short-coming to be alleged against the Appellant.
48. Even in the communication dated 07/01/2019 of MSEDCL wherein MSEDCL has unilaterally concluded that the Appellant is not a captive generator for the year 2014-15, the only reason given is the non-availability of unit wise metering data. However, on this issue, even the State Commission had dismissed the review petition of MSEDCL.
49. It is evident from the above that the entire purpose is to reopen the issues already concluded and settled on some excuse and then come to a conclusion that the captive status is not fulfilled in a vague manner. The main order dated 09/02/2018 read with the corrigendum order dated 18/03/2018 has examined in detail and come to a considered finding that the captive status is established.
50. There is no finding to the contrary in the impugned order, nor is there any finding on the specific calculations made by the State Commission in the main order. In the circumstances, the impugned order seeking to allow the review petition of MSEDCL is untenable in law and is liable to be set aside.

Re: shareholding details of m/s sona alloys

51. There is an observation in the impugned order that the date of change in shareholding of M/s Sona Alloys be communicated to MSEDCL. There is no difficulty, whereas any change in shareholding is immediately communicated by the Appellant along with each open access application.
52. This however would not affect the captive status of the other consumers, when the minimum requirement of 26% shareholding and 51% consumption has been met. In fact, this issue also arose for the year 2013-14 and the State Commission had followed the very same methodology while declaring the captive status.

Re: Direction to msedcl to re-examine captive status

53. While, it is the Appellants submission that the State Commission has exceeded its review jurisdiction, the State Commission has further erred in holding that MSEDCL and TPC-D shall re-examine the captive status of the Appellant for the year 2014-15 and that too in terms of the guidelines laid down in the order dated 17.01.2018 in Case No. 23 of 2017.
54. Firstly, it is settled law that the sole jurisdiction to determine the captive status is that of the State Commission as already settled by the Hon'ble Tribunal in its Judgment dated 18.05.2013 in the case of *Chhattisgarh State Power Distribution Co. Ltd. v. Hira Ferro Alloys Ltd. & Anr.* in Appeal No. 116 of 2009. The captive status has already been determined by the State Commission in the order dated 09/02/2018, which is also not disturbed in the impugned order. In the circumstances, there can be no question of MSEDCL

examining the captive status of the Appellant, that too after the declaration by the State Commission.

55. The Respondents in this regard have sought to project that the State Commission has not delegated the function of determining Captive Status to MSEDCL in the impugned order. However, at the same time, it has been suggested that in case after re-examination of data by MSEDCL, if there is a dispute with respect to CPP status, then the Appellant would have to approach the State Commission again for certification of CPP Status. In this regard, there is a clear dichotomy in this submission.
56. It is stated that the Appellant had filed Petition No. 77 of 2015 before the State Commission for determination of Captive Status for FY 2014-15. Vide order dated 09.02.2018 and corrigendum order 12.03.2018, the captive status has already been determined by the State Commission, which is also not disturbed in the impugned order.
57. While the State Commission in the impugned order, has not set aside the captive status of the Appellant for the year 2014-15, there can be no question of MSEDCL re-examining the same.
58. Further, the Appellant can certainly not be forced to file a petition before the State Commission for certifying CPP status, when the captive status has already been confirmed for the year on a petition filed by the Appellant itself.

59. In this regard, the contention of MSEDCL is essentially seeking that the Appellant should file another Petition before the State Commission for confirming the Captive Status, while the impugned order does not disturb the captive status already been confirmed by the State Commission in the earlier order.
60. MSEDCL is one of the distribution licensees in the State of Maharashtra. There are three distribution licensees in whose areas of operation the consumers of the Appellant are located, MSEDCL being only one of them.
61. MSEDCL is also an interested party to the entire issue, as MSEDCL is only seeking to collect cross-subsidy surcharge and other charges. In fact, MSEDCL seeks to collect the charges at the beginning of the year, which is contrary to the Electricity Act and Rules and has been consistently set aside both by the State Commission and the Tribunal.
62. The lack of bona fide of MSEDCL is also evident by the determination made by MSEDCL vide its letter dated 07/01/2019 wherein for the very same reasons that were rejected even in the impugned order (non-availability of unit wise metering data), it has unilaterally concluded that the captive status is not met by the Appellant.
63. In the circumstances, there can be no question of the State Commission directing MSEDCL to decide on the captive status, when the captive status has been declared by the State Commission and there is no finding in the impugned order on the

specific findings made by the State Commission earlier in the order dated 09/02/2018.

64. It is submitted that the principles and methodologies for determination and declaration of captive status have already been decided by the State Commission for the year 2013-14 by the order dated 20.08.2014. The said order was challenged by MSEDCL before the Hon'ble Tribunal in Appeal No. 252 of 2014, which appeal came to be dismissed by the Hon'ble Tribunal.
65. The Appellant and its consumers have arranged their affairs on the same basis during the year and following the very same methodology, the captive status was declared by the State Commission in the Order dated 09/02/2018.
66. Therefore, it was erroneous for the State Commission to go behind its own previous orders as upheld by the Hon'ble tribunal in relation to the principles and methodologies to be applied for the determination of captive status.
67. In the facts and circumstances, it is respectfully stated that the Appellant is entitled to the prayers as sought for in the appeal as well as the interlocutory application and the impugned order is liable to be set aside.

Submissions on behalf of M/s Sai Wardha Power Generation Ltd. in batch of Appeals filed by consumers for captive status in FY 2016-17

68. **Impugned Order:** Order dated 22.10.2020 passed by the Maharashtra Electricity Regulatory Commission in Case No. 175 of 2017.
69. **Nature of Impugned Order:** The State Commission by the impugned order has held that the units 3 & 4 of Sai Wardha's generating plant do not qualify to be a captive generating plant ("**CGP**") for FY 2016-17.
70. For the year 2016-17, the generation and consumption of Sai Wardha vis-à-vis its captive users is summarized as under:
- Total Generation from Unit 3 & 4 for FY 16-17: **1229MU.**
 - Total Consumption of Captive Users for the FY 16-17: **1183MU.**
 - Total % of Consumption by the Captive Consumers (17 consumers) for FY16-17: **96.25%.**
71. There is no dispute on 51% consumption criteria being fulfilled and also 26% shareholding criteria being fulfilled.
72. There is no issue of unit wise metering and supply from Units No. 1 and 2 (non-captive units). Units No. 1 and 2 have been under complete shut down from February 2016 to March 2018 and the only units operating were the captive units No. 3 and 4.
73. The only reason the State Commission has held the captive criteria as not being met is that proportionality has not been met by all the captive consumers.

74. While this finding is not correct on merits, it is submitted that the issue of proportionality itself does not apply, as held by the Hon'ble Tribunal in judgment dated 07.06.2021 in *Tamil Nadu Power Producers Association v. TNERC &Anr. (TNPPA Judgment)* (Para 12.14). It has further been held that the shareholding is to be considered at the end of the year on 31st March. (*Paras 11.19 to 11.22, Paras 13.5 to 13.6, and Para 16.7 to 16.10 of TNPPA*) It has also been held by that default by one consumer would not affect the others (*Para 14.6 and 14.7 of TNPPA*).
75. In the circumstances, the impugned order which is premised on the applicability of the principle of proportionality in terms of Rule 3 of the Electricity Rules, 2005 is liable to be set aside.

Submissions on behalf of M/s Sai Wardha Power Generation Ltd. in batch of Appeals filed by consumers for captive status in FY 2017-18

76. **Impugned Order:** Order dated 29.10.2020 passed by the Maharashtra Electricity Regulatory Commission in Case No. 170 of 2017.
77. **Nature of Impugned Order:** The State Commission by the impugned order has held that the units 3 & 4 of Sai Wardhas generating plant do not qualify to be a captive generating plant (“CGP”) for FY 2017-18.
78. For the year 2017-18, the generation and consumption of Sai Wardha vis-à-vis its captive users is summarized as under:

- Total Generation from Unit 3 & 4 for FY 16-17: **1129.54 MU**
- Total Consumption of Captive Users for the FY 16-17: **1148.14 MU**
- Total % of Consumption by the Captive Consumers for FY16-17: **101.65%**

79. There is no dispute on 51% consumption criteria being fulfilled and also 26% shareholding criteria being fulfilled.

80. There is no issue of unit wise metering and supply from Units No. 1 and 2 (non-captive units). Units No. 1 and 2 have been under complete shut down from February 2016 to March 2018 and the only units operating were the captive units No. 3 and 4.

81. The only reason the State Commission has held the captive criteria as not being met is that proportionality has not been met by all the captive consumers (**Para 53 to 66 of Impugned Order**).

82. While this finding is not correct on merits, it is submitted that the issue of proportionality itself does not apply, as held by the Hon'ble Tribunal in judgment dated 07.06.2021 in *Tamil Nadu Power Producers Association v. TNERC &Anr. (TNPPA Judgment)* (Para 12.14). It has further been held that the shareholding is to be considered at the end of the year on 31st March. (*Paras 11.19 to 11.22, Paras 13.5 to 13.6, and Para 16.7 to 16.10 of TNPPA*) It has also been held by that default by one consumer would not affect the others (*Para 14.6 and 14.7 of TNPPA*).

83. In the circumstances, the impugned order which is premised on the applicability of the principle of proportionality in terms of Rule 3 of the Electricity Rules, 2005 is liable to be set aside.

Submissions of the learned counsel Mr. Amit Kapur arguing for Tata Power Company Ltd.

84. The following batch Appeals have been filed challenging the Orders (i.e., Original Order and Review Order) passed by Maharashtra Electricity Regulatory Commission (“**MERC**”) while determining Sai Wardha Power Generation Limited’s (“**Sai Wardha**”) Group Captive Status for Financial Year 2015-16.

S. No	Appeals	Impugned Orders
1.	Appeal No. 106/2018 <i>[Sai Wardha v. MERC &Ors.]</i>	Ld. MERC’s Order dated 19.03.2018 passed in Case No. 159 of 2016 (“ Impugned Original Order ”).
2.	Appeal No. 136/2018 <i>[Viraj Profiles v. MERC &Ors.]</i>	
3.	Appeal No. 146/2018 <i>[Cosmo Films v. MERC &Ors.]</i>	
4.	Appeal No. 147/2018 <i>[Mahalaxmi TMT v. MERC &Ors]</i>	
5.	Appeal No. 150/2018	

	<i>[Lupin Ltd. v. MERC &Ors.]</i>	
6.	Appeal No. 152/2018 <i>[R.L. Steels v. MERC &Ors.]</i>	
7.	Appeal No. 205/2018 <i>[Tata Power-D v. MERC &Ors.]</i>	
8.	Appeal No. 341/2018 <i>[Sai Wardha v. MERC &Ors.]</i>	Ld. MERC's Review Order dated 22.10.2018 passed in Case No. 133 of 2018. (" Impugned Review Order ").
9.	Appeal No. 37/2020 <i>[Mahindra Sanyo v. MERC &Ors.]</i>	
10.	Appeal No. 40/2020 <i>[Mahindra CIE v. MERC &Ors.]</i>	

85. Sai Wardha is a generating company which is operating a 540 MW (4 x 135 MW) generating plant in the State of Maharashtra since 2011. Out of the 4 Units, Sai Wardha had identified Unit Nos. 3 & 4 as Captive Generating Units/ CPP Units ("**CPP Units 3 & 4**") and the remaining 2 Units viz., Units 1 & 2 as Non-Captive/ IPP Units ("**IPP Units 1 & 2**"). Sai Wardha has represented that non-captive/ IPP Units 1 & 2 are supplying power to third parties on Open Access and not to captive users.

86. On 29.11.2016, Sai Wardha filed Petition (Case No. 159 of 2016) before Ld. MERC seeking a declaration of its group captive status qua its identified Captive Unit 3 & 4 (2 x 135 MW) for FY 2015-16.
87. On 19.03.2018, MERC passed the Impugned Original Order in favour of Sai Wardha meets the captive status for FY 2015-15. MERC also held that 56.63 MUs had been generated and supplied by Sai Wardha from its IPP Units 1 & 2 to its captive users without any contract or approval. The said quantum of power is Unscheduled and cannot be accounted for as captive power and is deemed to have been drawn from the distribution licensees. Accordingly, the Distribution Licensees shall treat this power in accordance with law.
88. Being aggrieved by MERC's direction re. power supplied from IPP Units and the resultant levies by the Distribution Licensees, on or around 21.04.2018, few Captive Users namely, Viraj Profiles, Mahalaxmi TMT and R.L. Steel Pvt. Ltd filed Writ Petitions before Bombay High Court challenging the Impugned Original Order. The said captive users contended that:-
- (a) Principles of natural justice had been violated since Sai Wardha had not made them party before Ld. MERC and they were not given an opportunity of hearing.
 - (b) Their contract with Sai Wardha was for supply of power from Captive Units 3 & 4 and they cannot be faulted for Sai Wardha's default.

89. On 23.04.2018, Maharashtra State Electricity Distribution Company Ltd. ("MSEDCL") filed Review Petition (Case No. 133 of 2018) before Ld. MERC seeking review of the Impugned Original Order.
90. On 24.04.2018, Sai Wardha filed Appeal No. 106 of 2018 challenging the Impugned Original Order re. whether the power generated and supplied from Sai Wardha's IPP Units can be treated as deemed supply by the Distribution Licensees and charged temporary tariff.
91. On 25.04.2018, Hon'ble Bombay High Court disposed-off the Writ Petitions filed by the Captive Users as withdrawn and granted them liberty to approach this Hon'ble Tribunal.
92. On 03.05.2018, TPC-D filed Appeal No. 205 of 2018 comprehensively challenging MERC's Impugned Original Order dated 19.03.2018.
93. Around 14.05.2018, Sai Wardha's captive users filed Appeals challenging the Impugned Original Order.
94. On 22.10.2018, Ld. MERC passed the Impugned Review Order in Case No. 133 of 2018, partly allowing the Review Petition filed by MSEDCL to direct:-
- (a) MSLDC to provide certified data qua the quantum of power supplied/ injected from the IPP Units 1 & 2 of Sai Wardha's

generating station and the proxy of the G<>T (Generator Transmission interface) ABT metering, considered in the Impugned Original Order, so as to cover the data gaps in terms of non-availability of Unit-Wise joint meter reading.

- (b) Sai Wardha's captive status to be re-examined based on guidelines issued in Case No. 23 of 2017 and issues raised by MSEDCL in the review petition.
 - (c) MSEDCL and TPC-D to re-examine Sai Wardha's captive status within a period of 2 months and inform Sai Wardha about its analysis/ findings.
13. Aggrieved, Sai Wardha and two other captive users filed Appeals challenging Ld. MERC's Impugned Review Order.

II. Issues for Adjudication

95. The primary issues that arise for adjudication in the batch Appeals are:-

- (a) Whether the issues involved in the present Appeals are covered by this Tribunal's Judgment dated 07.06.2021 passed in *Tamil Nadu Power Producers Association v. TNERC &Anr.*, reported as 2021 SCC OnLine APTEL 19?
- (b) Whether MERC has erroneously computed the quantum of power generated and supplied by Sai Wardha from non-captive Units 1 & 2 to its captive users?
- (c) Whether MERC has erred distinguishing between the quantum of power generated and supplied by Sai Wardha from the Captive Units (3 & 4) and quantum supplied by the non-captive/ IPP Units 1 & 2 to its captive users thereby violating the

mandatory requirements of Rule 3 as affirmed by the Hon'ble Supreme Court in *Monnet Ispat & Energy Ltd. v. Union of India & Ors.*? This is particularly so since Ld. MERC in the Impugned Original Order has held that crucial data necessary for determining captive status has not been furnished.

- (d) Whether the Impugned Original Orders have been passed in violation of principles of natural justice?
- (e) Whether in the facts of the present case Sai Wardha meets the captive requirements for FY 2014-15?
- (f) Whether Hon'ble NCLT's Order dated 17.10.2019 absolves the captive users from their liability to pay CSS?

III. SUBMISSIONS

A. Non-Applicability of this Hon'ble Tribunal's Judgment dated 07.06.2021 in *Tamil Nadu Power Producers Association v. TNERC & Anr.*

96.. The captive users have contended that the instant Appeals are squarely covered by this Hon'ble Tribunal's Judgment dated 07.06.2021 in *Tamil Nadu Power Producers Association v. TNERC & Anr.*, reported as 2021 SCC OnLine APTEL 19 ("TNPPA Judgment").

97. At the outset it is most respectfully submitted that this Hon'ble Tribunal's TNPPA Judgment poses significant challenges being:-

- (a) Hon'ble Tribunal's Judgment dated 22.09.2009 in ***Kadodara Power Pvt. Ltd. v. GERC & Ors.***, 2009 ELR (APTEL) 1037 ("**Kadodara Power Judgment**") analysed the foundation of

interpretation of Rule 3 of the Electricity Rules and delved in the very aspect of why a company formed as an Special Purpose Vehicle (“**SPV**”) shall fall within the scope of an Association of Persons (“**AoP**”) and therefore have to meet the Rule of Proportionality [Para 15].

(b) It is noteworthy that the rationale in Kadodara Power Judgement was followed in subsequent judgments, including:-

- (i) **CSPDCL v. Hira Ferro Alloys and Anr.**, 2010 ELR (APTEL) 0759 [Para 34]
- (ii) **JSW Steel Limited v. KERC and Anr.** Appeal No. 136 of 2011 & Batch dated 21.12.2012 [Para 19]
- (iii) **JSW Steel Ltd. And Ors. v. MERC & Anr.** Appeal No. 311 of 2018 & Batch dated 27.03.2019 [Para 76]
- (iv) **Sai Wardha Power Co. Ltd. v. MERC & Ors.** Appeal No. 216 of 2013 dated 17.05.2016 [Para 15.2]

(c) The issue of application of the Rule of Proportionality on a SPV was *res integra*, being under challenge before the Hon'ble Supreme Court which did not stay the *Kadodara Power* Judgment.

Re. Erroneously holding Judgment in Kadodara Power as *per incuriam*

98. TNPPA Judgment has upset the settled position of law by holding this Hon'ble Tribunal's Judgment *Kadodara Power* Judgment as *per incuriam* without meeting the standards laid down by Hon'ble Supreme Court in:-

- (a) ***A.R. Antulay v R.S. Nayak &Ors.***, (1988) 2 SCC 602 [Para 42, 183]
- (b) ***Hyder Consulting (UK) Ltd. v. State of Orissa***, (2015) 2 SCC 189
- (c) ***Union of India &Ors. v. Paras Laminates (P) Ltd.***, AIR 1991 SC 696[Para 9]
- (d) Lord Goddard's observations in ***Moore v. Hewitt*** [1947] 2 A.E.R. 270-A and ***Penny v. Nicholas*** [1950] 2 A.E.R. 89, that 'per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

99. In the TNPPA Judgment, this Hon'ble Tribunal has held the *Kadodara Power* Judgment 'per incuriam' for the only reason that an AoP is a recognized tax entity and cannot be an incorporated entity. This finding appears to not consider the intent of Electricity Act and the reasoning provided in the *Kadodara Power* Judgment for holding a 'SPV' as an 'AoP'. In the TNPPA Judgment there is no reasoning provided to establish that this Hon'ble Tribunal's earlier *Kadodara Power* Judgment was inconsistent with extant statutory provision or was given in ignorance of any applicable law.

100. The principle of '*stare decisis*' when applied in legal realm would mean that once a court makes a decision, that court and other courts lower in judicial hierarchy are bound by that decision. This

principle ensures certainty and reliance on judicial precedents. Without there being an exceptional circumstance, it is not open for the judicial forums to contradict its earlier decisions.

101. Without prejudice to the foregoing, it is most respectfully submitted that if this Hon'ble Tribunal was inclined to take a contrary view from its earlier decision rendered in *Kadodara Power* which held the field for 11 years, the matter ought to have been referred to a Larger Bench, in terms of the law settled by the Hon'ble Supreme Court and the Full Bench of this Hon'ble Tribunal in ***Maruti Suzuki India Limited v. HERC & Anr.***, 2015 SCC OnLine APTEL 127 [Paras 34-36 & 61].

Re. Rule of Proportionality to be met by a SPV

102. Rule 3 of the Electricity Rules as upheld by the Hon'ble Supreme Court in ***Monnet Ispat & Energy Ltd. v. Union of India*** (Civil Appeal No. 18506-18507 of 2017 decided on 13.11.2017) contemplates legal dispensation applicable to CPP depending on the form it is established.

- (a) First proviso to Rule 3(1)(a) of the Electricity Rules creates an exception only for registered co-operative societies which operate a CPPs stating that the twin requirement of 26% and 51% have to be satisfied collectively. It is not correct to enlarge the scope of the exemption limited to the registered co-operatives societies and extend the same to SPVs as well.
- (b) Second proviso to Rule 3(1)(a) of the Electricity Rules provides for any other form of organizations other than co-operative societies and thereby creating a *deemed fiction* which

encapsulates all the possible forms of entities which have been formed by more than one 'person', as defined under the Electricity Act.

Section 2(8) of the Electricity Act which defines CGP does not provide for 'SPV' or 'company' as a separate class. It only refers to a co-operative society and AoP. The only purposive and logical conclusion which is necessarily implied is that the expression 'company' is included within the definition of 'association of persons'. Notably, the definition of 'person' under the Electricity Act is wide enough to include '*companies*' '*co-operative society*', '*association of persons*'.

Re. Reliance on taxation laws is erroneous

103. In this context, this Hon'ble Tribunal will not be guided by taxation case laws to distinguish between an AOP and a SPV, or to exempt the latter from meeting the Rule of Proportionality when that is governed by the Electricity Act and Rules as interpreted by the Hon'ble Supreme Court and this Hon'ble Tribunal. It is most respectfully submitted that:-

- (a) The case laws relied upon do not provide any support to the conclusion in TNPPA Judgment.
- (b) Per contra, Hon'ble Tribunal has overlooked the definition of 'persons' under Section 2(31) of the Income Tax Act, 1961, which categorically recognises that an 'Association of Persons' may be incorporated or not.
- (c) Similarly, the definition of 'persons' under Section 2(49) of the Electricity Act also clearly includes any company or body

corporate or association or body of individuals, whether incorporated or not, or artificial juridical person.

Thus, the distinction made in the TNPPA Judgment between SPV and an AOP basis of registration is erroneous.

Re. Applicability of TNPPA Judgment will result in gaming and declaring MERC (Distribution Open Access) Regulations nugatory

104. For a power plant to qualify as a CPP and for a user to qualify as a captive user, they have to meet the requirements laid down under Rule 3 of the Electricity Rules, i.e., meet the following requirements jointly:-

- (a) Captive users need to hold a minimum of 26% of the '**ownership**' in the power plant ("**Ownership Requirement**"); and
- (b) Not less than 51% of the aggregate electricity generated at the power plant, '**determined on an annual basis**', is consumed by such captive users. ("**Consumption Requirement**").

105. Hon'ble Madras High Court in **Madura Coats Pvt. Ltd. v. ARKAY Energy (Rameswaram) Ltd.**, 2009 SCC OnLine Mad 2087 has categorically held that:-

- (a) The Ownership Requirement is a **qualification** that is required to be fulfilled before a plant can be termed as a CPP, meaning thereby it is a **Condition Precedent**.
- (b) The Consumption Requirement is a **Condition Subsequent**, i.e., to be evaluated only at the end of the Financial Year.

This is why, Rule 3(2) speaks of it as an “obligation”, while Rule 3(1) speaks of “qualification”. This Hon’ble Tribunal in the TNPPA Judgment has failed to appreciate Hon’ble Madras High Court’s aforesaid Order.

106. It is submitted that non-application of Rule of Proportionality on SPV’s provides room for ‘gaming’ to entities who want to scrupulously evade the levy of CSS under Section 42. For e.g. in a SPV a captive user holding 0.5% shares may consume 51% power generated by the CPP and another user holding 25.5% shares may not consume any power at all, then also, in absence of the Rule of Proportionality, the power plant shall qualify as a CGP. Such ‘gaming’ could not have been the intent of the legislation and therefore ought not be permitted by this Hon’ble Tribunal.

107. The language of Rule 3(2) of the Electricity Rules makes it clear that captive users are under an obligation to meet the requirements of Rule 3(1). Being collective obligation of all the captive users in a group captive setup, failure of one captive user to meet the requirement of Rules 3(1)(a) and (b) may result in the entire group captive structure failing to meet the requirements of Rule 3(1)(a) and (b) of the Electricity Rules.

108. This Tribunal in its Order dated 30.04.2013 in Review Petition No. 2 of 2013 in Appeal No. 137 of 2011 titled ***JSW Energy Ltd. &Anr. v. KERC &Ors.*** [Para 14 – 18] has categorically held that a **captive user is required to identify the unit/ units intended for captive consumption at the time of induction of equity stage itself.** Hence, assessment of equity shareholding has to be a condition

precedent. This Rule seeks to prevent captive users from indulging gaming and identifying any unit as captive depending upon its own consumption during the relevant year. In this backdrop, this Hon'ble Tribunal's finding in the TNPPA Judgment that verification of 26% equity shareholding [in terms of Rule 3(1)] shall be done only at the end of the financial year and that there is no requirement for submission of Chartered Accountant Certificate or intimate change in shareholding, is contrary to:-

- (a) Rule 3(1)(a)(i) of the Electricity Rules – Condition Precedent requiring not less than 26% of the ownership in the CPP being held by the captive users. This qualification to be maintained not only at the beginning but throughout the Financial Year.
- (b) MERC (Distribution Open Access) Regulations 2014 (Reg. 9.2); 2016 (Reg. 8.5), as well as the MERC (Distribution Open Access) (First Amendment) Regulations 2019.

109. Unless suitable safeguards are built, the TNPPA Judgment may permit captive users to artificially adjust their equity shareholdings at the end of the Financial Year to enjoy the benefits of exemption from payment of CSS. Without prejudice, even if 26% is to be verified only at the end of the Financial Year, there shall be no distinction between granting Open Access under Sections 9 and 10 of the Electricity Act.

110. The MERC Distribution Open Access Regulations, *inter alia*, provide for submitting a Chartered Accountant Certificate with regard to shareholding pattern along with the Application for Open Access under captive mode. The documents required to be submitted along with the application are for the purpose of determining the eligibility for open access sought by any applicant and thus cannot be

construed as a mere formality. Furthermore, intimation of change in shareholding during the Financial Year is essential to validate whether the captive users held 26% equity share capital in the CPP throughout the year.

111.If this Hon'ble Tribunal concludes that the Appeals at hand are covered by the TNPPA Judgment, the MERC Distribution Open Access Regulations will effectively be rendered invalid without any challenge having been made to the same and without jurisdiction since vires of Regulations is beyond the jurisdiction of this Hon'ble Tribunal. [***PTC India Ltd. v. CERC***, (2010) 4 SCC 603 and ***Century Rayon v. MERC &Anr.*** 2020 SCC OnLine APTEL 5 (Paras 29 – 38)]

B. Illegal generation and supply of power by Sai Wardha from IPP Units 1 & 2 to its captive users during FY 2015-16 -

112.Sai Wardha approached the authorities with unclean hands in its Petition before Ld. MERC, **deliberately and wilfully suppressing material facts** qua generation and supply of power from its non-captive/ IPP Units 1 & 2 to its captive users during FY 2015-16. Sai Wardha sought to project an image that the entire power supplied by it to the captive users during the Financial Year was done solely from its identified Captive Units 3 & 4. This crucial fact was suppressed during FY 2014-15 as well. Sai Wardha ought to be held guilty of *suppressio veri* and *suggestio falsi*, as it was very much in knowledge of this crucial fact at the time of filing the Petition.

113. Only on 23.02.2017 (i.e., a year after filing the petition) Sai Wardha, during the hearing before. MERC, for the first time acknowledged that it had indeed supplied power to its captive users from its non-captive/ IPP Units 1 & 2. [*Paras 19.6 of the Impugned Original Order*]

114. Supply of power by Sai Wardha from its IPP Units 1 & 2 to its captive users was without any contract, schedule, open access approval and/ or intimation to any of the concerned authorities/ Licensees. Open Access approvals granted under Section 9 of the Electricity Act was for supply of power from Sai Wardha's CPP Units 3 & 4. Furthermore, the Transmission Capacity Rights of 135.15 MW availed by SaiWardha under the Bulk Power Transmission Agreement dated 28.02.2012 with MSETCL was also for supply of power from its identified Captive Units 3 & 4 alone. The captive users in their cross appeals and replies before this Hon'ble Tribunal have also stated that in terms of their contract with Sai Wardha, power was to be supplied from the CPP Units 3 & 4.

115. On one hand Sai Wardha claimed that the energy supplied from the IPP Units 1 & 2 had already been excluded and that Sai Wardha or its captive users would pay the CSS on this consumption. Yet, on the other hand, Sai Wardha failed to provide the actual quantum of such power or the details of tripping of its CPP Units 3 & 4 during FY 2015-16. [*Paras 19.6 of the Impugned Original Order*]

116. Based on the limited data submitted by Sai Wardha before Ld. MERC and primary data available on MSLDC's website, the Distribution Licensees had estimated that during FY 2015-16, Sai

Wardha had supplied power from its IPP Units 1 & 2 to captive users on approx. 25 occasions during April, July and August 2015 and January – February 2016. [*Paras 19.6 and 19.12 of the Impugned Original Order*]

117. In Para's 19.13 and 19.14 of the Impugned Original Order, Ld. MERC concluded that Sai Wardha has supplied 56.63 MUs of electricity from its IPP Units 1 & 2 to captive users and accordingly disallowed the said quantum from the total captive power supplied by Sai Wardha during FY 2015-16. Ld. MERC further held that the supply of 56.63 MUs by Sai Wardha from its non-captive Units is unscheduled power and therefore the power drawn by the captive users to that extent is deemed to have been drawn from the respective Distribution Licensees. [*Paras 19.13 and 19.14 of the Impugned Original Order*]

118. Although the treatment given by Ld. MERC to the power generated and supplied by Sai Wardha from its IPP Units 1 & 2 is correct, MERC has erroneously computed the quantum of such unscheduled power as 56.63 MUs vis-à-vis 118.52 MUs, failing to factor in the Day-wise details provided by Sai Wardha vide its Affidavit dated 24.07.2017 and the FBSM data provided by MSLDC. In this regard the following is noteworthy:-

- (a) On 24.07.2017 (after the matter was reserved for orders on 29.06.2017), Sai Wardha filed an Affidavit in Case No. 159 of 2016, *inter alia*, submitting its Day-wise and Unit-wise generation data for FY 2015-16 (i.e., Annexure B-1 of the said Affidavit). On a comparison of the sum of Net generation data

of IPP Units 1 & 2 and the total Day-wise consumption data provided by Sai Wardha, it was seen that Sai Wardha actually generated additional 119.79 MUs of power from its non-captive/ IPP Units 1 & 2. Meaning thereby that, a total of 119.79 MUs were adjusted against captive consumption when in fact the said quantum of power was not generated from Sai Wardha's CPP Units 3 & 4.

- (b) On a comparison of the above data provided by Sai Wardha with MSLDC's Final Balancing and Settlement Mechanism ("FBSM") data, it was seen that the quantum of 118.52 MUs was supplied by Sai Wardha from its non-captive/ IPP Units 1 & 2, whereas 1.27 MUs of power was overdrawn from the Grid which is settled as per Maharashtra FBSM.

38. In the Impugned Review Order Ld. MERC has acknowledged that the said data was not considered by it while passing the Impugned Original Order and has accordingly, directed MSLDC to verify and certify the aforesaid data re. supply of 118.52 MUs. [*Paras 7.32 – 7.36 of the Impugned Review Order*]

B-1. Impugned Original Order passed in absence of crucial data

119. MERC passed the Impugned Original Order in favour of Sai Wardha based on certain assumptions and uncertified data, in spite of observing that various crucial certified data sought vide Daily Order dated 29.06.2017 had not been furnished by Sai Wardha. [*Paras 15.6, 19.7 – 19.9 of the Impugned Order*]

120. In line with Ld. MERC's Daily Order dated 29.06.2017, the Distribution Licensees had repeatedly sought the crucial information relating to scheduling of power, certified metering data, details of generation from all 4 units, et al, from Sai Wardha and MSLDC, so as to assess compliance of Rule 3. *[Para 5.4 and 12.2(4) of the Impugned Original Order]*

121. Although it is Sai Wardha's contention that appropriate meters were always installed on each of its 4 generating units, by its Affidavit dated 28.09.2017, filed in Case No. 62 of 2017 Sai Wardha alleged that it does not have details of Net Generation of power from each of the 4 Units (i.e., 2 IPP Units and 2 Captive Units) of its Plant, for the period 01.05.2014 to 28.07.2017 (approx. 3 years including the FY under consideration), *since it failed to download and maintain a record of the Unit-wise generation and MSLDC allegedly had stopped downloading data from April 2014 onwards. [Para 19.7 of the Impugned Original Order]*. This submission was made only when Sai Wardha was directed to furnish the necessary data to verify its captive status.

122. Section 114 of the Evidence Act, 1872 envisages that "*the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*" Of the illustrations provided in this Section, Illustration (g) reproduced below, is of relevance to this Rule:-

"(g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."

123. The Hon'ble Supreme Court, in the following judgments has relied upon Illustration (g) to hold that: (i) if a party in possession of best evidence which throws light on the issue in controversy withholds it, the Court ought to draw an adverse inference against such party; and (ii) it is the duty of the prosecution to lead best evidence and adverse inference can be drawn when the best evidence is not produced before the Court.

- (a) *Tomaso Bruno v. State of U.P.*, (2015) 7 SCC 178 [Paras 21, 27-28]
- (b) *Gopal Krishnaji Ketkar v. Mohamed Haji Latif*, (1968) 3 SCR 862 [Para 5]
- (c) *Ajay Kumar D. Amin v. Air France*, (2016) 12 SCC 566 [Para 6-7]
- (d) *Mussaiddin Ahmed v. State of Assam*, (2009) 14 SCC 541 [Para 11]

As such, this Hon'ble Tribunal ought to draw an adverse inference against Sai Wardha.

124. Without prejudice to the above, it is pertinent to highlight that Ld. MERC in Para 19.7 – 19.9 of the Impugned Original Order has categorically held that:-

- (a) No explanation has been provided by Sai Wardha or MSLDC why the established and proper practice of taking monthly metered data of every Unit of Sai Wardha's power plant was stopped from June, 2014.
- (b) Since the basic discipline was not followed by the parties, there is absence of 15-minute time block recording at each

generating unit, change in injection source without appropriate approvals and scheduling directly to MSLDC instead of through the distribution licensees.

(c) Data provided by Sai Wardha is not certified data.

125. Having held that the certified data pertaining to Net Generation from all four Units is critical for establishing Sai Wardha's compliance with Rule 3, Ld. MERC could not have proceeded to hold that Sai Wardha has complied with the requirements of Rule 3, based on certain assumptions, in the absence of such critical and essential data. Compliance with Rule 3 cannot be determined based on assumptions and/ or incomplete data. Hon'ble Supreme Court in *Commissioner of Income Tax, Bihar and Orissa v. Shri Ramakrishna Deo* reported as AIR 1959 SC 239, has held that, "*the law is well settled that it is for a person who claims exemption to establish it...*". Meaning thereby that, Sai Wardha was required to establish, without any doubt, that it complies with the requirement of Rule 3 of the Electricity Rules and is therefore entitled to exemption from levy of statutory charges (CSS).

B-2. Supply of power by Sai Wardha from IPP Unit 1 & 2 distorts the parameters on which captive compliance is to be assessed

126. In order to be declared as a captive, Rule 3 mandates the captive user(s) to hold not less than 26% equity shares in the identified CPP Unit(s) and consume not less than 51% of the aggregate electricity generated by such CPP Unit(s) during the year.

127. In the present case, Sai Wardha / its captive users have sought to demonstrate captive compliance by submitting they hold 26% equity shares in the identified Captive Units 3 & 4 and have consumed 51% of the power generated therefrom during FY 2015-16. However, admittedly Sai Wardha has on multiple occasions (as many as 25) during FY 2015-16 generated and supplied power from its IPP Units 1 & 2 to its captive users, as if Units 1 & 2 formed part of its captive structure (portraying supply of such power as captive power in its Petition before Ld. MERC). By choosing to supply power from its IPP Units 1 & 2 in addition to the power supplied from the CPP Units 3 & 4, Sai Wardha has distorted the basic parameters on which captive compliance is to be assessed. Ld. MERC has erred distinguishing between the quantum of power generated and supplied by Sai Wardha from the Captive Units 3 & 4 and quantum supplied from IPP Units 1 & 2, thereby violating the mandatory requirements of Rule 3 as affirmed by Hon'ble Supreme Court in *Monnet Ispat* (supra).

128. In light of the facts of the present case, Sai Wardha/ its captive users ought to demonstrate compliance of Rule 3 (i.e., 26% equity holding and 51% aggregate consumption) basis all 4 Units of Sai Wardha's Power Plant and not just 2 units.

C. Absence of appropriate metering arrangement on / metering data from each of Sai Wardha's 4 generating Units

129. The metering arrangement at Sai Wardha's end is on the two outgoing 220 kV MSETCL Transmission Feeders viz., Warora Lines 1 & 2. Appropriate Unit-wise generating meters are not available on

each of the 4 Units (IPP Units 1 & 2 and CPP Units 3 & 4). It is for this reason that, Sai Wardha had conveniently injected power from its IPP Units 1 & 2 to its Captive Users and sought to account the same as captive power. Sai Wardha's contention that Unit-wise ABT meters are installed at each of Sai Wardha's generating units and that historical data is not available as MSLDC abruptly discontinued the practice of downloading the unit-wise generation data from June 2014 is misleading.

130. It is submitted that as on October 2018 (when TPC-D carried out a site visit), *the Metering arrangement on each of Sai Wardha's generating Units did not conform to the guidelines laid down in the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 ("CEA Metering Regulations") and by Ld. MERC.* As regards, the glaring discrepancies qua meters installed by Sai Wardha on each of its 4 generating Units (i.e., IPP Units 1 & 2 and CPP Units 3 & 4)

131. In terms of Regulation 14(3) of the CEA Metering Regulations read with the Clause 13.2 of the Maharashtra Metering Code for Intra-State Transmission System formulated by the State Transmission Utility it is also the responsibility of the concerned generating company record the metered data, maintain database of all the information associated with the energy accounting and audit meters and verify the correctness of metered data. Furthermore, it is necessary to prepare quarterly, half-yearly and yearly energy account for its system for taking appropriate action for efficient operation and system development. As such, Sai Wardha cannot be

permitted to cover-up its misdoings on account of any mistake, if at all, by MSLDC, and thereby take benefit of its own wrong.

D. Impugned Original Order passed in violation of principles of natural justice - Ld. MERC failed to revive the impugned proceedings

132. MERC failed to revive the impugned proceedings and give an opportunity to the parties to put forth their submissions, in spite of:-

- (a) Sai Wardha had failed to provide any of the requisite data in the manner directed by Ld. MERC vide its Daily Order dated 29.07.2017.
- (b) Sai Wardha by way of its Affidavit dated 28.09.2017 admitting that it did not have details of Net Generation of power from each of the 4 Units (i.e., 2 IPP Units and 2 captive Units) of its Plant, for the period of May, 2014 to 28 July, 2017 (i.e. for the period under consideration).
- (c) TPC-D's submissions dated 18.09.2017 and 16.10.2017, *inter alia*, requesting Ld. MERC to initiate an investigation in terms of Sections 94(1) and 128 of the Electricity Act read with Regulation 82 of the Conduct of Business Regulations into Sai Wardha. *[Paras 14 - 15 of the Impugned Original Order]*
- (d) Matter being tentatively reserved for orders (Daily Order dated 29.06.2017), *subject to the nature of submissions made by parties.*

E. Onus to prove that all requirements of Rule 3 are met in its absolute sense is on Sai Wardha/ its captive users

133. The onus to prove that all the requirements of Rule 3 read with the regulatory statutory framework qua supply of power from the CPP have been met in its absolute sense is on the captive generator (i.e., Sai Wardha) and the captive users, since they are seeking exemption from levy of CSS.

134. MERC in the Impugned Original Order erred by putting the onus of defaults on all the parties (i.e., including the distribution licensees) without appreciating that the mandate of law puts the onus entirely on the captive generator and captive users to demonstrate compliance of Rule 3 and not on any other party. Since Sai Wardha failed to provide the requisite data, MERC ought to have drawn an adverse inference against Sai Wardha and it ought not to have declared Sai Wardha as captive compliant for the period FY 2015-16. TPC-D as a distribution licensee cannot be expected to have Sai Wardha's unit-wise generation data.

135. In this regard, it may be noted that MERC failed to take note of Sai Wardha's conduct regarding non-disclosure of data which clearly amounted to suppression of material facts. Failure to download and maintain statutorily mandated Unit-wise Net Generation data for the period of May 2014 to 28.07.2017 (inclusive of FY under consideration) coupled with the admission of having generated and supplied power from IPP Units 1 & 2 to captive users cannot and ought not to have been ignored for the purpose of verifying Sai Wardha's captive compliance.

F. No impact of Hon'ble NCLT's Order dated 17.10.2019 on the present appeals and liability of captive users to pay CSS

136 The captive users have contended that:-

- (a) Hon'ble NCLT-Hyd. by its Order dated 17.10.2019, has approved the Resolution Plan submitted by the Resolution Applicant i.e., a Consortium of Sri City Pvt. Ltd. & KCR Enterprise LLP ("**Resolution Applicant**") in accordance with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"/ "**Code**").
- (b) In terms of the reliefs sought by the Resolution Applicant (in Paras 3(j)(e), (g), (i) and (s) of the Hon'ble NCLT's Order dated 17.10.2019) [**Pgs. 35, 37, 38, 40 of the NCLT Order**] and as granted, any non-compliance by Sai Wardha for the period prior to the date of the NCLT Order are waived off/ deemed condoned. Therefore, even if it is held that Sai Wardha has failed to fulfil the captive requirement, no action can be taken against it, as any non-compliance has been waived off.
- (c) The captive users should not be held liable for any alleged past non-compliance of Sai Wardha, which have been waived off by Hon'ble NCLT.

137. In terms of the regulatory framework and the facts of the present case the following is noteworthy:-

- (a) There is no contractual relationship between Sai Wardha and Distribution Licensees. The contractual relationship is only between Licensees and their consumer who had availed Open Access under Section 9 (i.e., Sai Wardha's captive users).
- (b) There is no debt which is due and payable by Sai Wardha to Licensees re. the Open Access granted. The NCLT Order is only applicable to Sai Wardha and its Financial/ Operational

Creditors and not to TPC-D (who is neither a Financial nor an Operational Creditor of Sai Wardha).

- (c) The claim of the captive users from Sai Wardha (i.e., the liability of the captive users to pay CSS to their Distribution Licensee), in the event of failure to demonstrate captive compliance by Sai Wardha, was to be borne by Sai Wardha may be impacted on account of the NCLT Order, but not of the Licensees from the Captive User. The captive user with whom the Distribution Licensees have a contractual obligation, have not undergone insolvency.
- (d) Failure of Sai Wardha to demonstrate captive compliance entails the captive users (and not Sai Wardha) to pay CSS and other statutory charges to the Distribution Licensee. In terms of the 4th Proviso to Section 42(2) of the Electricity Act, exempts a captive user from the payment of CSS. Therefore, Rule 3 clearly provides that a Captive User is to ensure captive compliance for seeking such CSS exemption and non-compliance entails the Captive User to pay for CSS which otherwise would be exempted.

In the circumstances mentioned above, it is most respectfully submitted that Appeal No. 205 of 2018 filed by TPC-D be allowed.

Submissions of the learned counsel Mr. G. Saikumar arguing for MSEDCL

138. Sai Wardha Power Generation Ltd. (SWPGL) had while arguing their Appeal nos. 340 & 341 of 2018 filed against the

review order of MERC for the Financial year 2014-15 (Order dated 22.10.2018 in Case No.132 of 2018) and 2015-16 (Order dated 22.10.2018 in Case No.133 of 2018) as well as in their reply to Tata Power's Appeals submitted that SWPGL had not disclosed the supply of approximately 56 MU from their IPP units no.1 & 2 as the MERC had in their order for FY 2013-14 considered 10.06 MUs supplied from IPP units 1& 2 as captive consumption and allocated the same to all captive users on a pro-rata basis. To that effect, the order passed by the Maharashtra Electricity Regulatory Commission, on 20.08.2014 in Case No. 101 of 2014, at Para 23 was quoted to this Tribunal, which reads as under:

"23. Based on the reply received from WPCL that 10.06 MU has been supplied to the Captive Users from other sources during outages (forced and planned outages) of Unit-3 &4. Further, upon enquiring to submit, consumer-wise details of energy supplied from sources during the outages of Unit-3 &Unit-4, WPCL submitted that supplies made from other sources during outages of Unit-3 & Unit-4 cannot be specifically identified to any captive consumer. Accordingly, in absence of consumer-wise details of supply made to the Captive Users during the outages of Unit-3 & Unit-4, the Commission has allocated 10.06 MU (11.30 MU after grossing up for auxiliary consumptions) among Captive Users on pro-rata basis of their consumption during the year."

139. It is humbly submitted that as in the case of Financial Years 2014-15 & 2015-16, SWPGL had not disclosed supply of 10.06 Mu's from IPP units 1 & 2 in their Petition before MERC. Since the distribution licensee raised this issue of suppression, the Commission was pleased to issue daily Order dated 29.05.2014 directing SWPGL to file necessary data, and in specific the following data:

"Provide the details of outages (forced and planned outages) and confirm whether during outages (forced and planned outages) of Unit-3 & 4, captive users have been provided supply from any other source including Unit 1 & 2:

- (i) If yes, provide the details of energy supplied and energy consumed during such period;*
- (ii) Also provide the details of such energy supplied duly certified from MSLDC."*

140. Despite this, SWPGL has at its will chose to give a vague response, resulting in the above referred judgement in Appeal No. 101 of 2014. It is the case of SWPGL that the Commission in the Order dated 20.08.2014 has allocated the power drawn from the other sources as "captive power" amongst captive users basis the annual consumption and it is this methodology by which the SWPGL has chosen to function.

141. It is submitted that reading of the Order dated 20.08.2014 in the aforesaid circumstances would go to show that it is wholly incorrect to say that SWPGL has been permitted to account the power from these alleged other sources as captive power. It is also completely out of place to assume that the Commission has in the above-mentioned facts and circumstances, allowed SWPGL to treat the power supplied from IPP units 1 & 2 during outages of CPP units 3 & 4 as captive power without any intimation of such supply from IPP units 1 & 2 and seeking permission or following any due process. Furthermore, assuming without conceding that even if for one year the Commission has treated the power from other sources as captive power, it cannot be used as a correct position of law by SWPGL for the years to come. SWPGL is bound by the law and must follow all principles and methodologies provided therein. It is also humbly submitted that the captive consumers of SWPGL are also big industrial giants and are well aware that their consumption of power from CGP units 3 & 4 are treated as self-use and ought to know that any supply from IPP units 1 & 2 would also be accounted as self-use if permission for open access is not availed under section 10 of Electricity Act and the twin test for being treated as CGP would have to be conducted taking into account all the four units of SWPGL. Therefore, SWPGL cannot be permitted to put forth such arguments.

A. Treatment of Special Purpose Vehicle under Electricity Act, 2003 and Electricity Rules 2005

142. Section 2 (49) of the Electricity Act, 2003 defines a "Person" and includes within its ambit a Company, Association of Persons or Cooperative Society. Section 2 (49) of the Electricity reads as under:

(49) "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;

143. Further, Section 2 (8) of the Electricity Act, 2003 defines a captive generating plant as follows:

(8) "Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a powerplant set up by any co- operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;

144. Reading together Section 2(8) and 2 (49) of the Electricity Act, 2003, clearly establishes that Person would include a company, a cooperative society and Association of Persons. The Parliament under Section 2 (8) of the Electricity Act, 2003, has created a legal fiction by virtue of a deeming provision to include the consumption of electricity by members of an AOP or a cooperative society as self use for evaluating the CGP status.

Otherwise, the AOP or Cooperative Society had to consume by itself the electricity generated from its generating stations. The said legal fiction has not been extended by the Parliament to the shareholders of a company, as is evident from section 2(8).

145. Moving further, by virtue of Rule 3 of the Electricity Rules, 2005, the Central Government by creating a legal fiction by way of a deeming provision, treats consumption of electricity by the shareholders of a company formed as a Special Purpose Vehicle for setting up of a generating station as self use. Such consumption of electricity is not to be construed as supply / sale of electricity but would in fact qualify as captive consumption. The said Rule, which has been framed under section 176 of the Electricity Act for the purpose of furthering the implementation of the provisions of the Electricity Act reads as under:

"3. Requirements of Captive Generating Plant.-

(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) 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:

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

(b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy (s) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including - ".

146. The definition of SPV elucidated under the Electricity Rules 2005 (point (d) of Explanation) reads as under:

d. "Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with

no other business or activity to be engaged in by the legal entity.

147. It is humbly submitted that Electricity Rules framed by the Central Government cannot alter or overreach the provisions of the Electricity Act framed by the Parliament. Since the Act has not permitted the consumption of electricity supplied by the generating station set up by the Company as self-use to qualify as CGP if the shareholders of a company consume the same, the Rules framed by the Central Government have no power to alter the same. Pertinently, the Reserve Bank of India, has in its Report on Special Purpose Vehicle (SPV) dated 29.12.1999, has clearly explained the distinction between the SPV and a normal company. A SPV formed as a company by an association of persons has restriction not to do any other business than what is envisaged by the association who created the SPV. The said association could have incorporated the SPV under other Acts like Trusts Act, Societies Registration Act, Partnership Act, LLP Act etc. and the purpose of formation of SPV is to insulate the persons forming the SPV from the risks of failure of high investment in the SPV and also protect the SPV in case of failure of one of its constituents. Therefore, the SPV formed as a company, which cannot do any other business and even its life could be determined at the start of the project cannot be strictly deemed to be a normal company incorporated under the Companies Act and as such can be equated to an association of persons forming the SPV. The SPV being a Company, Trust, Society or Partnership etc. depends upon the mode of

incorporation and as such it is an Association of Persons who formed the SPV. The definition of SPV as given under Rule 3 of the Electricity Rules, 2005 is in consonance with RBI report as mentioned hereinbefore. It is only by virtue of the said legal position that the legal fiction creating a deeming provision under Rule 3 (b) of the Electricity Rules 2005, that SPV and its captive users would qualify as CGP as an "Association of Persons" and not be in violation of the Parliament's intention of not extending the benefit to a Company as mentioned herein before.

148. The legal fiction so created by the Electricity Rules 2005, requires that a) 26% of the ownership of the power plant is held by its captive users and b) 51% of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent.

149. In the case of a co-operative society, the members of the society are to satisfy the twin condition collectively. The special dispensation given by the Central Government to cooperative society is because of the policy to promote formation of cooperative societies (which was eventually made a fundamental right under Article 19(1)(c) and insertion of Article 43(b) of Constitution of India for promotion of Cooperative Society by way of 97th amendment to the Constitution in the year 2011-12), This legal fiction has been accepted and held

good by this Tribunal, in its Judgment dated 27.03.2019 which affirmed KadodaraJudgement (passed by the bench presided over by the same Chairperson who was also the Chairperson whilst passing of the Appeal No. 131 of 2020 Tamil Nadu Power Producers Association Vs. Tamil Nadu Electricity Regulatory Commission- read Para 58 to 63.

150. Pertinently, a bare reading of the Rule 3 clearly establishes that the condition of 26% shareholding is to be adjudged at the threshold and not annually as opposed to the condition of 51% consumption, which can be adjudged only at the end of the financial year. Therefore the position held by the Judgment dated 07.06.2021 in Appeal No. 131 of 2020 I Tamil NaduPower Producers Association Vs. Tamil Nadu Electricity Regulatory Commission in respect of Rule 3 of Electricity Rules read with Section 2(8) while dealing Issues 2 and 3 formulated therein is wholly erroneous and fallacious.

151. Further, Rule 3 (b) deals with a specific contingency envisaging a situation where a generation station has been set up by a "Special Purpose Vehicle" and only one or some of the units of the generating station have been identified for captive use, and not the entire generating stations, then only such units would be required to comply with such requirements. Pertinently, it was specifically to provide legal dispensation to the specific contingency that the Rule has been formulated. Needless to state, Rule 3 (b) envisages the compliance of Rule 3 (a) (i) and (ii) along with the proviso, and does not create any exception to the same.

152. It is a settled position of law that where a legal fiction is created, it necessarily must be followed in its letter and spirit and the interpretation given must be as was intended by the maker of such rules/ legislation. The Hon'ble Supreme Court in the cases of State of A.P. v Vallabhapuram Ravi (1984) 4 SCC 410 and American Home Products Corporation v Mac Laboratories(P) Ltd (1986) 1 SCC 465 have dealt with the effect of a deeming fiction.

B. Joint meter reading

153. As far issue regarding the Joint Meter reading is concerned, it must be emphasized that SWPGL is a consumer of the transmission utility and not MSEDCL. A Transmission System User under the MERC Transmission Open Access Regulation, 2005, is defined in the following manner:

"Transmission System User" means a person who has been allotted transmission capacity rights to access an intra-state transmission system pursuant to a Bulk Power Transmission Agreement, except as provided in Regulation 5.1 below

154. SWPGL has a Bulk Power Transmission Agreement (BPTA) with MSETCL for evacuation of power from the entire plant. The settlement of energy is governed by BPTA and SWPGL pays transmission charges directly to MSETCL.

155. Pertinently, the power is being evacuated through 2*200 KV feeders at 220 KV Warora Sub-Station of MSETCL. The status of the import and export of power is visible at State Load Dispatch Centre and the meter data is available with MSETCL for every month. In the case of plant shut down, SWPGL has to seek permission from SLDC and therefore, SLDC has record of plant shutdown of SWPGL.

156. Notably, MSEDCL has no role in the meter reading of SWPGL. However, the arguments advanced on behalf of SWPGL attempt to confuse MSEDCL and MSETCL and latch responsibility upon the Distribution Company, when SWPGL is in fact a transmission user. It must be highlighted that even prior to 2014, the Central Government officials have been taking the reading and not MSEDCL. Therefore the submission is incorrect and misleading.

157. Pertinently, the Commission in the Order dated 22.10.2020 in Case No. 175 of 2017, has held that:

20.53 The Commission further notes that the SWPGL's Generating Plant/ Units (i.e. Captive and Non-Captive combined) are connected with the Intra-State transmission network and in its reply to clarification dated 6 February 2018, SWPGL clarified that Joint Meter Reading was taken in presence of the MSETCL officials. The relevant reply is reproduced below:

"8. Is joint meter reading data for CPP and IPP Generator is available for FY 2016-17. Whether joint meter reading is now being taken.

SWPGL Reply:SWPGL is connected with Warora Sub Station through 220 kV line and signed connectivity agreement with MSETCL on 09.07.2007. SWPGL injection point metering details mentioned in Page 27 of the connectivity agreement and joint meter reading is being taken every month in presence of MSETCL officials.

ABT Meters are present for each Generating Unit to record Net Generation on 15 minutes time slot basis (SLD with Metering details enclosed as Annexure- E) and pursuant to the direction from Hon'ble MERC dated 14th September 2017 in Case No.62 of 2017, monthly Unit wise Net Generation data on 15 minute time slot basis is being submitted to the discoms from Aug'17 onwards. We have also stated that MSETCL can install their own meters if necessary, as recorded in the order dated 14th Sept 2017 in Case No. 62 of 2017.

We have also been in correspondence with MSEDCL on the certification of the SEMs installed at Generator end for Net Generation. Presently, the meter data is being downloaded by us and forwarded to the DISCOMs and there is no joint reading. We have been advised by SE (TQA) MSEDCL,Nagpur vide letter dated 05.01.2018 to replace the Generator Meters existing CTs/PTs from multicore multi-ratio to single-core single ratio of the meters. We have requested

MSEDCL vide letter dated 13.01.2018 & 30.01.2018 to provide the MSETCL approved technical specifications for CTs /PTs for procurement of same and same is awaited. Copy of letter dated 30.01.2018 enclosed as Annexure- F."

20.54 In this context, it is imperative to look into the relevant provisions of MERC DOA Regulations, 2016 which are reproduced as under:

"17.5. The Distribution Licensee shall be responsible for reading the SEM at least once in every month:

Provided that the authorized representative of the Consumer, Generating Station or Licensee, as the case may be, shall be entitled to be present at the time of meter reading

17.9 The Distribution Licensee to whom the Consumer or Generating Station is connected shall be responsible for providing the energy meter data to the MSLDC for the purpose of energy accounting"

20.55 From the above provisions, it is clear that the data was to be taken jointly by the Distribution Licensee along with the Generator if the Generating Station is connected to the distribution network. However, as SWPGL is connected to the transmission network, the joint meter reading has to be taken by the generator and the STU as mentioned by the Commission in its Order in Case No. 23 of 2017. The same has been reproduced at Para 20.50 of this Order "

158. Therefore, it is an admitted position of fact that the SWPGL was a consumer connected to the transmission system and not to the network of Distribution licensee. Therefore, frivolous arguments to state that the MSEDCL was to take meter reading and has failed in its responsibility is incorrect and fallacious. Such arguments being advanced at behest of SWPGL are distasteful and shows the *mala fide* of SWPGL.

C. Procedure for Open Access

159. The Commission has set out the following procedure modalities in regard to captive status under the Order dated 17.01.2018 in Case No. 23 of 2017:

"19. During these proceedings, the need for setting a time frame along with roles and responsibilities for the process of determining CPP status was also referred to. The Commission is of the view that this is necessary in order to systematise the process and give greater clarity and comfort to both sides. As the Commission has observed in its earlier Orders in Case Nos. 117 of 2012 and 101 of 2014, and considering the provisions of the Electricity Rules, 2005, the claimed Group CPP must declare any change in the shareholding pattern of Captive Users at the start of the financial year and any subsequent changes during the year, along with the applications for Open Access from the Licensee, without which the concerned entity would not be considered as a Captive User. In this background, the Commission is setting out the following modalities to be

followed by the Distribution Licensees and the entities claiming to be CPPs:

- a) At the outset, when Open Access is first sought, details of the shareholding pattern of the claimed CPP shall be submitted in the context of the provisions of the Electricity Rules, 2005, supported by a Chartered Accountant (CA)'s Certificate. In the event of any change in the shareholding pattern during the financial year, the revised shareholding should be intimated to the concerned Distribution Licensee(s) within 10 days, with CA certification. The CA's Certificate should contain details of all shareholders, including the Captive Users, and their voting rights. In case there is no change in the shareholding pattern during the financial year, the Generators should provide an undertaking to that effect along with the CA Certificate as at the end of the year.*
- b) Each CPP Generating Unit shall have a separate Special Energy Meter (SEM) as per the specifications in the Central Electricity Authority (CEA) (Installation and Operation of Meters) Regulations, 2006 as amended from time to time. The monthly reading data at the Generation Transformer EHV level, outgoing feeder level and that of auxiliary consumption should be submitted to the Distribution Licensee(s) and to MSLDC in hard and soft versions. Downloading of monthly data of all these meters shall be jointly undertaken by the*

Generator and Distribution Licensee(s), and the State Transmission Utility (STU) (if relevant). Similarly, the sealing of the respective meters, their testing, etc. should also be jointly undertaken by the Generator, Distribution Licensee(s) and the STU (if relevant), and appropriately certified. The general practice adopted for any HT consumer monthly meter reading should be followed.

- c) The SEM meters should be tested periodically as per the prescribed testing procedures.*
- d) Tripping events of the CPP Generating Unit should be informed to the Distribution Licensee(s) and MSLDC along with the period of outage. Power from the non-CPP Units shall not be injected into the grid without appropriate permissions of the respective authorities.*
- e) By the 30th of April, the Generator shall submit all the relevant data required for establishing its CPP status in the previous financial year. The data shall include the quantum of generation at the Generator Terminal, auxiliary consumption, consumption recorded at the EHV side of the Generator Transformer, the consumption recorded at the outgoing feeders and the consumption of captive consumers grossed up at the Generator Terminal level (along with the necessary computations). This data shall be provided for each month of the financial year, in Excel format.*
- f) The Distribution Licensee(s) shall seek clarifications, if any, and confirm the CPP status or otherwise by 31*

May. In case any clarifications required are not received or are inadequate, the Distribution Licensee(s) shall jointly decide on the CPP status and inform the Generator accordingly.

- g) If the Generator is not satisfied with the status as determined by the Distribution Licensee(s), it may approach the Commission by 15 June. In that event, the Distribution Licensee(s) shall not levy CSS and Additional Surcharge, if any, till the final decision of the Commission.*
- h) If the Generator does not approach the Commission by 15 June with any dispute regarding its CPP status, the Distribution Licensee(s) may proceed to levy the CSS and Additional surcharge, if any, with applicable interest. This shall be without prejudice to the Generator's statutory right to approach the Commission for adjudication of its dispute after that date."*

160. At this juncture it is imperative to clarify, SWPGL was a Transmission System User and not a consumer of the DISCOM. It is the captive users who were connected to the system of MSEDCL and MSEDCL is responsible for taking meter readings of these consumers. MSEDCL has no access to the meters of the SWPGL and this data is utilized by the certified data provided by the State Load Dispatch Centre. This is neither in issue nor in contention. MSEDCL has never disputed the data.

161. The Distribution Open Access Regulations, 2016 provide for submission of the following documents along with an application for open access:

- i. Consent from Seller if Buyer is the Applicant, or consent from Buyer if Seller is the Applicant
- ii. Copy of Supply Agreement
- iii. Proof of payment of Application fee
- iv. Copy of Trading Licence
- v. Copy of relevant documents from the Power Exchange if power is sought through a Power Exchange (Registration/ Membership details, Member-Client agreement, etc.)
- vi. Copy of Memorandum of Association and Chartered Accountant's certificate of shareholding pattern, if power is sought under captive mode
- vii. SEM commissioning certificate, if already installed

162. Regulation 8.2 of the Distribution Open Access Regulations provide:

8.2. The Nodal Agency for Open Access and Connectivity to the Distribution System shall be the Distribution Licensee in whose area of supply the Consumer or Generator is located;

Provided that the Nodal Agency shall specify on its website the name, designation and contact details of the nodal officer who will be a single point contact for all Open Access and Connectivity related matters in accordance with these Regulations:

Provided further that, where the Consumer or Generating Station is connected or intends to connect to the network of a Transmission Licensee, then the Nodal Agency shall be as specified in the Regulations of the Commission governing Transmission Open Access or the relevant Regulations of the Central Commission, as the case may be.

163. If found eligible, an Open Access Agreement shall be entered into upon grant of Medium or Long Term Open Access in the format provided in Annexure V under the Distribution Open Access Regulations, 2016.

164. Each CPP Generating Unit is required to have a separate Special Energy Meter (SEM) with real time communication facility with SLDC as per the specifications in the Central Electricity Authority (CEA) (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and in line with MERC order dated 17.05.2007 (Case No. 42 of 2006 - Availability Based Tariff Regime).

165. The monthly reading data at the Generation Transformer EHV level, outgoing feeder level and that of auxiliary consumption is required to be submitted by the captive generator to the Distribution Licensee(s) and to MSLDC in hard and soft versions. Downloading of monthly data of all these meters shall be jointly undertaken by the Generator and Distribution Licensee(s), and the State Transmission Utility (STU) (if relevant). The Billing is for each month is done basis this data.

166. At the end of the year, the captive generators are required to submit to Distribution Licensee the relevant data including the quantum of generation at the Generator Terminal, auxiliary consumption, consumption recorded at the EHV side of the Generator Transformer, the consumption recorded at the outgoing feeders and the consumption of captive consumers grossed up at the Generator Terminal level (along with the necessary computations) for each month of the financial year.

167. Subsequently, clarifications, if any, are sought by Distribution Licensee and the CPP Status is then either confirmed or otherwise and communicated to the generator.

168. If the Generator is not satisfied with the status as determined by the Distribution Licensee, it has the opportunity to approach the Commission. In that event, the supplementary CSS and Additional Surcharge bill is kept in abeyance. If the Generator does not approach the Commission with any dispute regarding its CPP status, MSEDCL proceeds for recovery of the CSS and Additional surcharge.

D. Sona Alloys

169. It is submitted that the Commission after passing the Order dated 09.02.2018 in Case No. 77 Of 2015. The Commission went on to pass a corrigendum Order thereby correcting certain figures in columns 'a' and 'b' of Table 13 under the heading "Permissible Range

for shareholding pattern for 51% consumption criterion”.

170. Consequent to such correction, it became evident that Distribution Licensee(s) submissions and assertions were correct and that Sona Alloys did not meet the CGP criterion of captive consumption of at least 51% ($\pm 10\%$) in proportion to its shareholding, considering its equity shareholding as on 1.4.2014 (till 11.12.2014) (Scenario (i)). However, Sona Alloys does meet this criterion considering its equity shareholding as on 11.12.2014 (Scenario (ii)), as reflected in Table 14 by the Commission wrongly applying the principles of weighted average on shareholding which is impermissible as the weighted average can only be applied on consumption which alone has to be checked on an annual basis. The Commission concluded as follows:

Shareholding Period	No. of Days	No. of Shares
01.04.14 to 10.12.14	254	2653455
11.12.14 to 31.03.15	111	1415176
Weighted Average	365	2276882

171. Only by virtue of this principle, which is impermissible under law, did Sona Alloys qualify the captive criterion. TNPPA judgement (Order dated 07.06.2021 in Appeal NO. 131 of 2020) cannot be applied to these transactions and as such is under challenge in Appeal No. 106 of 2018 & Batch Page 146 these batch proceeding as being per incuriam.

E. Appeal No. 106 of 2018

172. It must be highlighted that in so far as the argument pertaining to

power injected by SWPGL from Unit Nos 1 and 2 for the years 2015-16 is concerned, it must be highlighted that MSEDCL accounts for the power on a 15 minutes time block basis.

173. As indicated hereinabove, each of the units are connected to the transmission utility and not to the system of DISCOM. Therefore the scheduling of the power from all units of SWPGL was done at the Bus Bar and the unitwise details of the power was not available to MSEDCL. Accordingly, the accounting of the consumption and generation was done in 15 minutes time block, as per the schedule provided by SWPGL. It was only upon perusal of the MRI data received from the MSLDC that it became evident that 56.63 Mus of power was unscheduled power from units 1 and 2. SWPGL has in its defence even sought to frivolously contend that *It is incorrect to contend that the supply from Unit S1 and 2 should be treated as Unscheduled Interchange and charged penalty. The scheduling is at the bus-bar and for the Generating Station. The schedule has been met from the Generating Station. It is only for the purposes of captive supply that the generation needs to be from Units 3 and 4 and not for the purposes for Unscheduled Interchange.*

174. The Commission rejecting this submission has held that *“Moreover, consequently, since the injection of 56.63 Mus from the IPP Units 1 and 2 is unscheduled and cannot be accounted for as CGP power, the power drawn by the Captive Consumers to that extent is deemed to have been drawn from the respective Distribution Licensees. Hence, the Distribution Licensees shall treat this unscheduled power in accordance with the applicable provisions of the EA, 2003 and the relevant Rules and Regulations.”*

175. In terms of the Order, MSEDCL has levied a temporary tariff on the over-drawn power to the extent 56.63 Mus.

F. Miscellaneous

176. Apart from the above, it is pertinent to note that SWPGL had not made any application or obtained Open Access under Section 10 of the Electricity Act, 2003. It is neither the case of the SWPGL nor any such contention was raised that Units 1 and 2 of SWPGL had obtained Open Access under Section 10 of the Electricity Act, 2003.

177. Therefore, the power injected from Units 1 and 2 of SWPGL during outages in the absence of such open access arrangement /agreement, is as such unscheduled power and subsequently concealing the fact of such units having been injected, shows the intent of SWPGL to mislead this Tribunal.

178. It is incumbent therefore that even for Units No. 1 and 2, the captive criterion be verified in light of the admission of SWPGL of having injected into the grid the power from IPP Units without seeking OA permission under section 10 and mixing the said generation with the captive pool for FY 2014-15 and FY 2015-16.

Submissions of the learned senior counsel Mr. Sajan Poovayya arguing for Mahindra Sanyo Special Steel Private Limited

A. Group Captive

179. The present proceedings are in respect of determination of captive status of Group Captive Power Plant wherein the obligation of consumers are as specified in Section 9 of the Electricity Act, 2003 ("EA 2003") read with Rule 3 of the Electricity Rules, 2005 ("Electricity Rules"). The captive consumers are required to hold 26% shares in the SPV and consume 51% of the power generated by the identified CPP units.

180. Units 3 and 4 were identified as captive and the consumers entered into Power Purchase Agreement ("PPA") for consuming power from only these Units 3 and 4 and accordingly, open access (OA) were also sought only for consuming power from these identified Units 3 and 4.

181. Further a management approval note granting OA permission to one of the consumers of TPCD annexed as Annexure A3 of the impleadment application filed by Tata Power Company Limited – Distribution in Case No. 77 of 2015 (FY 2014-15) before Ld. MERC contain the following terms and conditions on which basis OA permission was granted by TPC-D:

“ 9. Billing

9.1 Tata Power shall raise a monthly bill on Open Access Consumer based on the meter readings taken as per clause 8. This bill shall have adjustments for the energy procured on open access based on Implemented Schedule uploaded by MSLDC. In the event of dispute or difference with respect to the monthly bill on the Open Access Consumer, the Open Access Consumer agrees to

refer such dispute to the Internal Grievance Cell of Tata Power duly constituted as per the provisions of Electricity Act, 2003 and thereafter to Consumer Grievance Redressal Forum and Electricity Ombudsman.

9.2 Any consumption in the 15 minute time block, after adjusting for "Schedule with Tata Power" under open access in the respective 15 minute time block, shall be considered to be procured from Tata Power. If the units procured from Tata Power are within the reduced/revised contract demand, these units shall be charged as per the tariff approved by MERC...

...

11. Final Settlement for energy procured on open access:

11.1 Tata Power shall carry out final settlement of energy procured on open access for a month, through a credit note, only after the Maharashtra State Load Dispatch Centre ("MSLDC") conducts final frequency based settlement mechanism {"FBSM"} settlement for that month.

11.2 The final settlement of energy procured on open access shall be passed on to the Open Access Consumer in the form of a credit note within 15 days after receipt of final settlement bill from MSLDC. It is agreed between the Open Access Consumer and Tata Power that, Tata Power shall carry out the final settlement only after receipt of settlement from MSLDC."

182. Thus TPCD according to terms and conditions imposed by itself was obliged to make adjustments and generate bills on the basis of proper certified data. It is not out of place to state that in the event TPCD did not have data, it was empowered to cancel the OA permission. Further, as the OA permission was sought only from Units 3 and 4 MSEDCL as well as TPCD ought to have given credits only for units generated from Units 3 and 4. It is non-performance of the obligations by the distribution licensees and for which consumers cannot be punished. It is well settled principle that “no man can take advantage of its own wrong” See *Indian Council for Enviro –Legal Action v. Union of India & Ors*, (2011) 8 SCC 161.

183. MSSSPL is a consumer of MSEDCL and SWPGL also falls in the jurisdiction of MSEDCL.

184. MSSSPL as a consumer complied with its obligations of holding shares and consuming power. MSSSPL relied on applicable law and assumed all other parties complied with their respective obligations.

B. Metering and Metering Data

185. Regulation 16 of the Maharashtra Electricity Regulatory Commission (Transmission Open Access) Regulations, 2005 (“TOAR, 2005”), Regulations 21 of the Maharashtra Electricity Regulatory Commission (Transmission Open Access) Regulations, 2014 (“TOAR, 2014”), Regulation 7 of the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005 (“DOAR 2005”) read Regulation 13, 23 of Maharashtra

Electricity Regulatory Commission (Distribution Open Access) Regulations, 2014 (“DOAR 2014”) had made the installation of the Special Energy Meters (“SEM”) compulsory for generating station and open access consumers. SEM is a pre-requisite for granting of open access permissions. It is to be noted that the consumers were granted OA permissions time and again (for almost 3 years) without any such objections being raised by the concerned Distribution Licensee in this regard. The relevant extract of the portion of TOAR, 2005, TOAR, 2014, DOAR, 2005 and DOAR 2014 are hereto annexed and marked as Annex “C”.

186. Vide MERC’s Order dated May 17, 2007 in Case No. 42 of 2006 pertaining to Final Balancing and Settlement Mechanism (FBSM), Maharashtra State Load Despatch Centre (“MSLDC”) is conferred with responsibility of collecting and verifying data. The relevant extract of aforesaid order is reproduced below for ready reference:

“2.3.6 With regard to CPP using conventional power sources, deviations on such transactions will be accounted at the consumer end as in case of distribution licensees.

...

3.4.4 Role of MSLDC

Pursuant to Section 31(2) of the EA, 2003, MSETCL being Government Company continues to operate the State Load Despatch Centre (MSLDC). Various functions to be undertaken by the SLDC have been specified under Section 31(2) of the EA, 2003, as follows:

...

(e) Be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.

...

3.4.4.1- Role of MSLDC-CD (Commercial Division of MSLDC)

...

The role of the MSLDC-CD shall continue in its present form for the following activities.

(a) Collecting metering data from all Transmission to Distribution interface points.

(b) Verifying the collected data

(c) Processing the collected data

(d) Storing the collected data

In addition the MSLDC-CD shall:

(a) Collect metering data from all Generation to Transmission interface points.

(b) Verify process and store the G – T data.

(c) Ensure that any data that is not collected by MRI download is substituted by profiled actual data using the interface point manual reading as a base.

(d) Obtain the required data from other sources that is required to run the BSS, these include:

.....

(iv) Data relating to approved PPA allocations and MERC approved Transmission Tariffs.

(e) Ensure the accuracy and completeness of the data before the BSS is run.

(g) Issue statements to each DISCOMs / TOAUs which clearly and accurately shows the overall balances attributable to each entity for the month.

.....

(a) All source data used in constructing the final statement of balances will be made available to Stakeholders.”

“The responsibility and performance obligation of the MSLDC-CD in its capacity as ‘Reconciliation and Settlement Manager’ shall cover following key areas:

- 1. Metering Systems: All metering systems at the G-T and T-D interface points will be read using MRIs or through suitable remote meter reading, as the case may be. In addition, all metering points will have manual start finish readings collected as check data on a monthly retrospective basis.*
- 2. Data Collection: Data collection will, as stated above be by way of MRI backed up by manual start finish readings. The data shall be collected at the end of each calendar week and is time stamped to ensure accuracy. All collected data shall be received by the MSLDC-CD within 3 days of the end of the calendar month to which it relates.*
- 3. Data Storage: The collected data shall be securely stored within the MSLDC-CD at the MSETCL and back-ups taken should be held off-site as a contingency against data catastrophe. The system holding the data shall have*

appropriate anti-virus and firewalls to ensure that the data cannot be accessed by unauthorised persons.

4. *Data Substitution: Where any case of totally or partially missing data is found, the affected interface point shall have its entire month's data substituted using the Profiled Data Substitution Module."*

187. SLDC had certified the data and metering arrangement of SWPGL in its Reply filed in Appeal No. 38 of 2020 of MSSSPL for FY 2014-15 and had submitted as follows:

"viii. The Answering Respondent humbly states that as per the Metering Code for Intra-State Transmission of Maharashtra (pursuant to section 34 of the State Grid Code) the interface points identified by Respondent No. 3 Sai Wardha Power Generation Limited in respect of Final Balancing and Settlement Mechanism (FBSM) are the 220 KV at Warora-I and II outgoing feeders and the meter data for outgoing 220 KV Warora-I and II lines has already been provided to the Hon'ble MERC vide letter no. 1012 Dtd 6 June 2017 by the Answering Respondent and the same was taken on record by the Hon'ble MERC while issuing the Order in Case No. 77 of 2015. ...".

- ix. *Pursuant to Central Electricity Authority (Installation and operation of Meters) Regulation, 2006 and Metering Code for Intra-State Transmission of Maharashtra (pursuant to section 34 of the State Grid Code) the interface points identified meters were installed at said location and data of these meters was utilised for Final Balancing and*

Settlement Mechanism (FBSM)/ Unscheduled Interchange (UI) bills calculation".

188. SLDC in its Reply filed in Appeal No. 37 of 2020 of MSSSPL for FY 2015-16 had made similar submission.

189. It is pertinent to note that the MERC had considered data submitted by SLDC in its Original Orders for FY 2014-15 at para 25 at page 32. The relevant portion is reproduced below for ready reference:

"25...

Hence, the Commission sought data on the generation schedules of these Units and the data on trippings in respect of all four Units from MSLDC. Based on the data provided by MSDLC vide its e-mail dated 17 January, 2018 and the submissions made by SWPL, the Commission notes the following, which is of relevance to the determination of the CGP status of Units 3 and 4 in FY 2014-15:

..."

190. SWPGL has submitted in its Reply dated November 11, 2019 filed in Appeal No. 234 of 2018 that SWPGL duly complied with the requirements of Electricity Act, 2003 and the Rules framed thereunder and accordingly had installed SEM for its power generating units in the year 2011. It is submitted that Unit-wise ABT meters are installed at each of SWPGL units and it was MSLDC who abruptly discontinued the practice of downloading the unit-wise generation data from June 2014 thereby trying to wrongfully pass on the onus of meter reading on SWPGL.

191. Under Regulation 14(3) of Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 the distribution licensee or the generating company is responsible for the timely meter readings.

192. In Commercial Circular No. 170 dated June 13, 2012 issued by MSEDCL, it was clarified that energy meter reading will be responsibility of MSEDCL and generator / consumer every month.

193. It is denied that the Distribution Licensees did not have data for generation of SWPGL. It was recorded by Ld. MERC that the Distribution Licensees had made submissions on data of SWPGL vide their letters. The relevant portion of Para 19.10 of Original Order for FY 2015-16 at page No.35 is reproduced below:

“ ...

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

194. Bills were raised on consumers of SWPGL including MSSSPL giving details of the total units consumed by MSSSPL with a bifurcation of total units injected through the approved OA and the units supplied by MSEDCL including over-injected and under-injected units by MSEDCL and SWPGL Bills raised on MSSSPL match. The data in bills also matched with the fifteen (15) minutes block data available in the TSC and TSR report generated for

MSSSPL by MSEDCL. The bills raised by Distribution Licensees for OA consumers are raised after following the applicable mechanism as prescribed in Regulation 26 of DOAR, 2014 wherein over drawl of units and over-injection can be derived only after availability of data by Distribution Licensees. Hence the submissions that captive status were determined by derived data is false. The credit of units provided to consumer matched the units billed by SWPGL. As the consumer never sought power from Units 1 and 2, the credit ought to have been given only for units generated from Units 3 and 4 in the bills of MSSSPL. The Doctrine of Election would not be applicable in the present case as MSSSPL had never chosen to receive supply from Unit I or II of SWPGL. The Hon'ble Supreme Court in *National Insurance Co. Ltd. v. Mastan*, (2006) 2 SCC 641: 2006 SCC (L&S) 401 : 2005 SCC OnLine SC 1741 held that the "doctrine of election" is a branch of "rule of estoppel", in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had which is not the case here. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both.

195. Distribution Licensee is required to issue correct bills and consumer is required to pay the same in timely manner failing which consumer may face threat of disconnection. MSSSPL is not required to verify the bills by collecting metered data and identifying the source as such identification was given at the time

of seeking open access from Units 3 and 4 only which are captive power plant units.

196. Consumers such as MSSSPL had legitimate expectation that distribution licensees shall act in fair manner and honour their roles and responsibilities. See *National Building Construction Corporation Vs. S. Raghunathan* (1998) 7 SCC 66. The relevant extract of *National Building Construction Corporation Vs. S. Raghunathan* (1998) 7 SCC 66 is reproduced below:

“18. The doctrine of "Legitimate Expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is making to violation of natural justice. It was in this context that the doctrine of "Legitimate Expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "Legitimate Expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

20. *Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service* (1985) AC 374 laid down that doctrine of "legitimate Expectation" can be invoked if the

decision which is challenged in the Court has some person aggrieved either:

- (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or*
- (b) by depriving him of some benefit or advantage which either:*
 - (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or*
 - (ii) he had received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.*
(Emphasis supplied).

21. The Indian scenario in the field of "Legitimate Expectation" is not different. In fact, this Court, in several of its decisions, has explained the doctrine in no uncertain terms."

197. If OA permissions were granted year on year without following proper provisions of DOAR, bills were raised without existence of proper data and in contravention of DOAR, then the same is gross negligence on part of the Distribution Licensees. The license of Distribution Licensees need to be revoked under

provisions of Section 19 of the EA 2003 for contravention of Regulations of the State Commission.

198. Thus, the contention of Distribution Licensees that there are no meters or data was not available is false as without such data bills could not be raised on consumers of SWPGL.

Submissions for questions posed:

199. Why in the first place this transaction was allowed without the existence of separate billing meters for the units of SWPGL and why should the same not be considered illegal?

As stated above, SEM is pre-requisite and no open access can be granted without such metering arrangement in place as required under applicable laws.

200. Would the act of SWPGL to conceal the fact that certain units of power had been supplied from the non-captive units, amount to fraud instead of mere misrepresentation?

- a. SWPGL had submitted that the State Commission vide its Order dated August 20, 2014 in Case No. 101 of 2013 had dealt with similar issue and had determined the GCGP status of SWPGL for FY 2013-14. This includes the principles and manner of apportionment of generation from Units No. 1 and 2 during the period of 2013-14 when Units No. 3 and 4 were under outage. The State Commission vide the said Order held SWPGL to be a GCGP for FY 2014-15. The power supplied by

SWPGL from other sources during outages of Units 3 and 4 had divided such injected power on pro-rata basis among the captive users.

- b. It is to be noted that the said order had unequivocally held that the default on the part of few captive consumers, should not affect other consumers adhering to the Rules and thus, should not be penalized.
- c. The relevant extract of the Order dated August 20, 2014 in Case no. 101 of 2013 is reproduced herein below for your ready reference:

“23. Based on the reply received from WPCL that 10.06 MU has been supplied to the Captive Users from other sources during outages (forced and planned outages) of Unit-3 & 4. Further, upon enquiring to submit, consumer-wise details of energy supplied from sources during the outages of Unit-3 & Unit-4, WPCL submitted that supplies made from other sources during outages of Unit-3 & Unit-4 cannot be specifically identified to any captive consumer. Accordingly, in absence of consumer-wise details of supply made to the Captive Users during the outages of Unit-3 & Unit-4, the Commission has allocated 10.06 MU (11.30 MU after grossing up for auxiliary consumptions) among Captive Users on pro-rata basis of their consumption during the year.

.....

31. The Commission further noted that two shareholders i.e., M/s Facor Steels Ltd. and M/s

Spentex Industries Ltd., after seeking open access under Section 9 of the EA, 2003 (i.e., for self use), have not consumed any energy from the CGP. The Commission notes that in the present case, principle of natural justice arises, where there are multiple users of varied industries/ usage catering the requirements at different geographic locations who have come together to fulfill the Captive criterion and do not have control over the usage of each other. The Commission is of the opinion that because of default to Captive Criterion by said two shareholders, the other consumers adhering to the conditions of the Electricity Rules, 2005, should not be penalised for wilful default or otherwise by two shareholders.

32. Further, the Commission is of the view that such consumers who have defaulted by asking for open access and not consuming energy under open access, have been irresponsible in their roles as shareholders in a Group Captive Generating Plant and should be penalised to ensure that in future a few shareholder cannot jeopardise the agreement beneficial to many. The Commission therefore is of the opinion that such shareholder should be asked to pay a penalty. Accordingly, MSEDCL should submit a proposal for penalty to the Commission for approval.

.....

37. The Commission is of the view that two consumers i.e., Facor Steels Ltd. and Spentex

Industries Ltd. who asked for open access and did not consumed energy under open access have been irresponsible in their roles as shareholders in a Group Captive Generating Plant and should be penalised to ensure that in future a few shareholder cannot jeopardise the agreement beneficial to many. The Commission therefore is of the opinion that such shareholder should be asked to pay a penalty. Accordingly, MSEDCL should submit a proposal for penalty to the Commission for approval.”

- d. The Order dated August 20, 2014 in Case No. 101 of 2013 was challenged by MSEDCL before this Hon’ble Tribunal in Appeal No. 252 of 2014 on various issues. The said Appeal was dismissed by this Hon’ble Tribunal vide Order dated June 03, 2016 approving the methodology followed by the State Commission for declaration of captive status of SWPGL. The relevant extract of the Order dated June 03, 2016 in Appeal No. 252 of 2014 is reproduced herein below:

“This appeal, being Appeal No. 252 of 2014, being without merits is hereby dismissed. The part of the Impugned order, which is under challenge before us in this appeal at the instance of the appellant, the distribution licensee, is hereby upheld.”

While an Appeal against this Hon’ble Tribunal’s Order dated June 03, 2016 in Appeal No. 252 of 2014 is filed before Hon’ble Supreme

Court of India vide Civil Appeal No. 10412 of 2016, there is no stay on the Order of this Hon'ble Tribunal till date.

- e. Ld. MERC had in its Original Order for FY 2014-15 at para Nos. 25(vi) and 25(vii) at page no. 34 observed that data from MSLDC was considered for determining the units consumed during outages and the captive consumption was much higher. The relevant portion of the order is reproduced below for ready reference:

“25...

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

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

- f. It is imperative to note that as the captive status of SWPGL was held compliant for FY 2013-14 and there were no objections raised on metering or non-availability of data, the consumers such as MSSSPL participated in the captive matrix within four corners of law and basis the prevalent practice and regime.
- g. See *M. Nagabhushana Vs. State of Karnataka and Others* (2011) 3 SCC 408. Doctrines of precedent and stare decisis clearly states about the consistency and certainty in law. See *Bussa Overseas and Properties Private Limited and Another Vs. Union of India and Another* (2016) 4 SCC 696. The relevant extract from *Bussa Overseas & Properties (P) Ltd. v. Union of India*, (2016) 4 SCC 696 : 2016 SCC OnLine SC 512 at page 711 is reproduced below:

“31. In this context, we may profitably reproduce a passage from State of A.P. v. A.P. Jaiswal [State of A.P. v. A.P. Jaiswal, (2001) 1 SCC 748 : 2001 SCC (L&S) 316 : AIR 2001 SC 499] wherein a three-Judge Bench has observed thus: (SCC p. 761, para 24)

‘24. Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis, etc.’....”

201.What is the procedure laid down by MERC for determination of captive status?

- a. Provisions of EA 2003 and Electricity Rules prescribe twin conditions to be satisfied by a power plant to be qualified as a CGP viz; equity shares to be held by the captive users shall not be less than 26% of the proportion of the equity of the Company related to generating units identified as CGP and captive users should consume not less than 51% of electricity generated determined on an annual basis in proportion to the share of their ownership of the power plant.
- b. This Hon'ble Tribunal had provided following conditions for determination of captive status of a generation plant in its Order dated June 07, 2021 in Appeal No. 131 of 2020- Tamil Nadu Power Producers Association vs. Tamil Nadu Electricity Regulatory Commission and Ors. This Hon'ble Tribunal had held as follows:
 - i. CGP and captive users have to comply with the conditions mentioned under Rules 3(1)(a)(i) and 3(1)(a)(ii) of Rules, 2005 whereas the second proviso to Rule 3(1)(a) is a stand-alone provision and cannot be intermingled with sub-rule (b) in any manner. In the case of an SPV, the test of proportionality is not applicable as the legislature in its wisdom has created an intelligible differentia, between an Association Of Person ("AOP") and Special Purpose Vehicle ("SPV"). **Decision in Kadodara Power Private Limited &Ors. v. Gujarat Electricity Regulatory Commission &Anr. [2009] APTEL 119 did not consider the established tenet that**

an AOP and SPV under general law as well as Rule 3 of Rules, 2005 cannot be equated on a similar footing.

Therefore, it was concluded that in case of SPV, no proportional consumption requirement can be applied. Only requirement for captive status is minimum shareholding of 26% and minimum consumption of 51% of power generated by the captive users.

- ii.* This Hon'ble APTEL had applied its ruling made in Appeal No. 252 of 2014 and Appeal No. 316 of 2013, stating that complying with twenty six percent (26%) and fifty one percent (51%) consumption are the minimum requirements, and **the rest of the captive users not fulfilling the above conditions will have no impact to the overall captive structure.** There cannot be any liability to make payment of CSS by defaulting captive users if the rest of captive users fulfill the minimum requirements. It was therefore held that the requirement of paying CSS by any defaulting captive users is not required if the remaining captive users have fulfilled the conditions.
- iii.* Impugned Order is an attempt to open the already concluded transactions by requiring additional documents over and above the documents already furnished by CGP's and captive users who have availed OA in the past and such requirement of additional documents for such concluded transactions would amount to changing rules of the game after the game has started, which is impermissible under law. Reliance was placed on *K.*

Manjusree v. State of Andhra Pradesh &Anr. (2008) 3 SCC 512.

- iv. **The Statement of Object and Reasons of EA, 2003 along with the intent behind National Electricity Policy, 2005 and the National Tariff Policy, 2016 is always to promote the captive industry without any unnecessary hindrance or obstacles.** The twin requirement under Rule 3 of Rules, 2005 have to be determined at the end of the financial year together, and there cannot be application of the concept of weighted average for verifying shareholding at any given point of time in financial year. Further CGP does not lose its character by transfer of the ownership or any part thereof. A generating plant produces power primarily for the user of its owner(s) and this can be done within the confines of a financial year. Reliance was placed on *Kadodara Power Private Limited &Ors. v. Gujarat Electricity Regulatory Commission &Anr. [2009] APTEL 119.*
- c. Rule 3(2) of the Rules cast the responsibility of maintaining the consumption and shareholding according to Rule 3(1)(a) and 3(1)(b) annually on a captive consumer.
- d. The captive users of SWPGL had fulfilled both the above requirements and same was concluded by Ld. MERC for FY 2014-15 and 2015-16 (Paras 18.8 and 33 of the Original Order for FY 2014-15 at page Nos. 31 and 38; Paras 18.8 and 19.17 of the Original Order for FY 2015-16 at page Nos. 33 and 41).

- e. SWPGL had submitted the necessary shareholding and consumption details for establishing fulfilment of captive status for FY 2014-15 and FY 2015-16.
- f. Ld. MERC in Original Order for FY 2014-15 at para 25 at page 32 observed certain lapses on part of SWPGL as well as the Distribution Licensees. Hence, Ld. MERC vide its Order dated January 17, 2018 in Case No. 23 of 2017 streamlined the process for the determination of captive status going forward.
- g. It is pertinent to note that there are no non-compliances on part of captive users such as MSSSPL.

Submissions the learned senior counsel Mr. S.K. Rungta arguing for the State Commission

202. That the above noted appeals have been filed challenging the determination of captive status of identified units 3 & 4 of SWPGL by the commission for the FY 2014-15 and 2015-16 .

203. That the appellants and some of the respondents in the respective appeals have advanced their arguments in respect of the said appeals and therefore the commission wishes to make its submission in respect of the orders passed by the commission and the contentions raised by the parties in the said appeals.

204. That these appeals for the FY 2014-15 & 2015-16 could be divided into following five sets of appeal:-

- VI. *Appeal No.234/2018 filed by TPC(D) (Distribution licensee) Against order Dt. 9.2.18 and Corrigendum Order Dt. 12.3.2018 passed in case No.77/2015 declaring that Units 3 & 4 of Sai*

Wardha qualifies as captive units for the financial year 2014-15 and therefore Sai Wardha's captive consumers were entitled to the exemption from payment of CSS.

- VII. ***Appeal No.340/2018 and batch of appeals filed by SWPGL(Generator) and captive consumers of SWPGL challenging review order dt.22.10.2018 in case No.132/2018 partially allowing the review of main order dt. 9.2.2018 & 12.3.2018*** affording an opportunity to MSEDCL and other distribution licensees to obtain the authenticated data from MSLDC and SWPGL and examine the same for determination of captive status of SWPGL for the financial year 2014-15.
- VIII. ***Appeal No.205/2018 filed by TPC-D (distribution licensee) challenging the main order dt.19.3.2018 in case No.159/2016*** whereby the commission declared that Units 3 & 4 of Sai Wardha qualifies as captive units for the financial year 2015-16 and therefore Sai Wardha's captive consumers were entitled to the exemption from payment of CSS.
- IX. ***Appeal No.106/2018 filed by SWPGL (Generator) challenging the main order dt.19.3.2018 in case No.159/2016*** limited to the extent that the commission declared 56.63 MUs to be unscheduled supply as the same was injected from IPP Units 1 & 2 and accordingly held that the power drawn by the captive consumers to that extent is deemed to have been drawn from respective distribution licensees with consequential implications as per applicable provisions of EA, 2003 and relevant rules and relevant regulations.
- X. ***Appeal No.341/2018 and batch of appeals filed by SWPGL(Generator) and its captive consumers challenging review order dt.22.10.2018 in case No.133/2018 partially***

allowing the review of main order dt. 19.3.2018 in case No.159/2016 in view of the difference in the data relied upon by the commission pertaining to supply of electricity to captive consumers from IPP Units 1 & 2 and data derived by MSEDCL with a direction to MSEDCL with active engagement of TPC-D and other distribution licensees to obtain the authenticated data from MSLDC and SWPGL and re-examine the same for determination of captive status of SWPGL for the financial year 2015-16.

205. That the respondent No.1 commission shall now deal with the said appeals year wise.

A. **FOR FINANCIAL YEAR 2014-15:**

Appeal No.234/2018 has been filed by TPC-D(Distribution licensee) challenging order dt. 9.2.2018 and corrigendum order dt. 12.3.2018 in case No.77/2015 whereby the commission had found units 3 & 4 of SWPGL as CPP on the basis of the CA certificate in respect of shareholding pattern submitted by SWPGL for meeting the first requirement of 26% shareholding of captive consumers and data supplied by MSLDC vide its mail dt. 17.1.2018 with regard to generation and consumption of electricity by captive consumers of Sai Wardha. Further, Appeal No.340/2018 and connected appeals have been filed by SWPGL and its captive consumers against review order dt. 22/10/2018 in case No.132/2018 whereby the commission partially allowed the review by directing SWPGL and MSLDC to furnish data unit wise to MSEDCL and thereafter MSEDCL in close consultation with TPC-D may examine the

authenticated data so furnished for verification of CPP status of the said units of SWPGL. Thus, two sets of appeals are pending consideration before this Hon'ble Tribunal challenging both the main order r.w. corrigendum order on one hand and review order on the other hand for the FY 2014-15.

Appeal No.234/2018:

It is submitted that the commission passed main order dt. 9.2.2018 as well as corrigendum order dt. 12.3.2018 in case No.77/2015 by analyzing the information supplied by SWPGL with regard to its shareholding pattern as well as consumption of electricity by its captive consumers. It is pertinent to mention here that appellant TPC-D filed a misc. application No.02/2016 seeking impleadment/ intervention in the said case on the ground that TPC-D is a distribution licensee for supply of electricity in Mumbai and part of its suburban area. During the financial year 2014-15, Mahindra & Mahindra Ltd., a consumer of SWPGL had sought open access for the said financial year for availing power as a group captive user from SWPGL. The said application was allowed by the commission (Para 5 of the order). Accordingly, TPC-D was allowed to intervene in the matter as some of the consumers of TPC-D are in the group captive Open access arrangement. Later on R-Infra D was also impleaded on the same ground. In view of the contentions raised by TPC-D and MSEDCL, the commission also impleaded MSLDC to obtain data on the generation schedules of these units i.e. 3 & 4 (CPP) and data on tripping in respect of all four units.

The commission examined the issue of fulfillment of twin requirement by SWPGL i.e. 26% shareholding by captive consumers and consumption of not less than 51% of the electricity generated in identified captive units 3 & 4 determined on an annual basis in proportion to their shares in the ownership of the power plant within a variation not exceeding 10%.

a. Requirement of 26% shareholding by captive consumers of SWPGL

This issue was examined by the commission on the basis of CA certificate furnished by SWPGL during the year and on the basis of the said examination the commission concluded that SWPGL fulfils the first requirement of 26% shareholding of captive consumers vide paras 18.6, 18.7 & 18.8 which are reproduced hereinbelow:-

“18.6. The Commission also notes that, while in Table 5 of its Petition SWPL has shown the shareholding of India Steel Works Ltd. as 0.15%, it actually works out to 0.29% as per the Audited Shareholding Certificates as on 1 April, 11 December and 15 December, 2014. Hence, the Commission considers 0.29% to be its shareholding for assessment against the captive status criteria for FY 2014-15. This information is important to establish that the equity shareholding of the Captive Users in Units 3 and 4 of the Plant did not fall below 26% at any time during the financial year.

18.7. Further, from the information regarding the implemented schedule of the Captive Users submitted by SWPL, it is observed that Cosmo Films had not consumed any power from the CGP Units during the year. Accordingly, in line with the approach of the Commission in its previous Order in Case No. 101 of 2014 (for FY

2013-14), the Commission has considered only those Users who actually consumed energy from the CGP in FY 2014-15. In the present case, Cosmo Films held only 0.63% of the aggregate 13.86% equity shareholding held by the Captive Users. Hence, even if it is not considered, the aggregate equity shareholding of the Captive Users would be more than 13% at the overall Company level with four Generating Units. Thus, even if the newly-added Member, Cosmo Films, is not considered, the aggregate equity holding of the Captive Users would be well above 13% at the overall Company level (i.e. more than 26% of the Captive Units 3 and 4).

18.8. Based on the available information, the Commission concludes that the aggregate equity shareholding of the Captive Users meets the first requirement of the Electricity Rules, 2005 inasmuch as they held more than 26% equity shareholding in the CGP Units 3 and 4.”

- b. Consumption of not less than 51% of the aggregate electricity generated by the units identified for captive use on an annual basis in proportion to the shares in the ownership of plant held by the captive consumes within a range of 10%.**

The commission has noted in para 15.2 that MSLDC vide its letter dt. 1.6.2017 informed that the interface points identified for SWPGL in respect of FBSM are meters of outgoing feeders i.e. 220KV Varora I and 220KV Varora II lines. It has further stated that MRI data of SWPGL of only these two line meters is available with it. However, G.T. wise ABT data is not available with MSLDC.

The commission therefore examined the captive status of SWPGL in respect of its units 3 & 4 based on the data provided by MSLDC vide its e-mail dt. 17.1.2018 and the submissions made by SWPGL. The commission after taking note of the data provided by MSLDC and comparing the same with the data provided by SWPGL concluded that SWPGL met the CGP criterion of captive consumption of at least 51% in proportion to the shareholding of captive users within 10% in accordance with 2nd proviso of rule 3(1)(A)(ii) of Electricity Rules 2005. Accordingly, SWPGL and its captive users were held to be entitled to the consequential dispensations, including exemption from payment of CSS since it qualifies as a group CGP in FY 2014-15 in respect of units 3 & 4. The findings on this aspect are contained in paras 32-33. The commission has also noted in para 34 that in view of the glaring deficiencies and omission in the data and its analysis, the commission has set out guidelines for the purpose of streamlining the procedure of determination of captive status in order dt. 17.1.2018 in Case 23/2017.

The commission corrigendum order dt. 12.3.2018 whereby the status of Sona alloys was revised with respect to criterion of 51% and revisions were made in the respective table on that count.

To sum up the said order was passed in the backdrop of following factual matrix and largely by relying on derived data of generation and consumption submitted by MSLDC.

- i. Admittedly, metering arrangement at Sai Wardha's end is on the two out-going 220 kV MSETCL Transmission Feeders viz. Warora Lines 1 & 2. It is thus clear that the generating station of

Sai Wardha was not connected to the distribution licensee but was connected to the transmission network of STU.

- ii. Appropriate Unit-wise generating meters are not available on each of the 4 Units (IPP Units 1 & 2 and CPP Units 3 & 4).
- iii. There is no unit wise meter data available for the year 2014-15.
- iv. Supplies have been made during FY 2014-15 from Unit 1 & 2 (IPP Units) to the captive consumers of Sai Wardha during the outages of units 3 & 4 (CPP units) particularly in the month of October 2014.
- v. MSLDC has ABT data for meters installed on 220 KV Warora 1 & 2 lines but not at the generator transformer of each unit.

APPEAL NO.340/2018 and other batch appeals:

That Appeal No.340/2018 and other batch appeals have been filed by SWPGL (Generator) and its captive consumers challenging order dt. 22.10.2018 passed by the respondent commission in review petition No.132/2018. The commission vide impugned order partially allowed the review filed by respondent No.2 MSEDCL in the following terms at pages: 20-34 Annexure-A relevant at page 34:

- i) The petition of MSEDCL in case NO.132/2018 is partially allowed.*
- ii) MSLDC is directed to submit the copy of the E-mail submission dt.17.1.2018 to MSEDCL and TPD-D. SWPL shall submit the details regarding the exact date when the shareholding of Sona Alloys changed.*

- iii) *The commission directs MSLDC and SWPL to submit all the details as required by MSEDCL within 10 days from the date of this order for re-examining the CGP status for FY 2014-15.*
- IV) *The commission directs MSEDCL to re-examine the status of SWPL as CGP or otherwise based on guidelines issued in case No.23/2017 and the issue raised by MSEDCL in this case. TPC-D should also be actively involved by MSEDCL in such re-examination process.*
- v) *MSEDCL should complete the above exercise within two months and inform SWPL about its findings in a clear and lucid manner.”*

That vide order dt.9.2.2018 and corrigendum order dt. 12.3.2018 in respect of which review petition was filed, the status of the appellant as CGP was declared on the basis of data provided by MSLDC by its e-mail dt. 17.1.2018 which was not shared with the respondent No.2 MSEDCL (review applicant) and also other distribution licensees i.e. TPC-D and primarily on this ground the review was partially allowed.

The main ground of challenge in these appeals is that the respondent commission has no powers to review its earlier order in the facts and circumstances of the present case as the scope of power of review is very limited and there is no mistake apparent on the face of record in the main order. The said ground of challenge is untenable.

The commission has exercised the power of review in accordance with regulations 85(a) of MERC Conduct of business Regulations,

2004 as noted in Para (7) of the impugned order at page 28. The said regulation is reproduced hereinbelow:-

“Review of decisions, directions, and orders:

85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which

(i) no appeal has been preferred or

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

That it is on the touch stone of this regulation that the respondent commission considered the review petition and exercised its power.

After analyzing the ambit of said regulation 85(a) r.w. section 94(1)(f) of Electricity Act 2003, the Commission exercised its power of review by entertaining the review petition in question on the ground that the data provided by MSLDC in its mail dt. 17.1.2018 was neither part of proceedings nor was shared with the parties including MSEDCL which filed the review petition in question by giving a detailed justification in para 8.1 of the impugned order at page 28:-

“PARA 8.1

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

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

8.1.2 MSEDCL stated that the Commission’s impugned Order is vitiated by error apparent as data provided by MSLDC vide its email dated 17 January, 2018 which was the basis for determination of the CGP status was neither a part of the proceeding nor was shared with any of the parties. Having examined the contentions of the Respondent, the Commission appreciated the fact that the Respondents can have concerns regarding the data provided by MSLDC which was considered as the basis for the Commission’s Order regarding the determination of CGP status and accordingly, the Respondents may have the right to analyze the data and make appropriate submissions in the matter.

8.1.3 Admittedly, the parties were not served the copies of the document received from MSLDC, based on which the impugned Order was passed. In view of the principle of natural justice, the Commission accepts the submission of MSEDCL on this ground and allows to make submission on the data provided by MSLDC vide email dated 17 January, 2018.”

Thus, both the main orders as well as the review order are under challenge before this Hon'ble Tribunal by all the parties concerned.

FOR THE YEARS 2015-16

Appeal No.205/2018 filed by TPC(D) (distribution licensee) challenging the main order dt.19.3.2018 in case No.159/2016 whereby the commission declared that Units 3 & 4 of Sai Wardha qualifies as captive units for the financial year 2015-16 and therefore Sai Wardha's captive consumers were entitled to the exemption from payment of CSS. Appeal No.106/2018 filed by SWPGL (Generator) challenging the main order dt.19.3.2018 in case No.159/2016 limited to the extent that the commission declared 56.63 MUs to be unscheduled supply as the same was injected from IPP Units 1 & 2 and accordingly held that the power drawn by the captive consumers to that extent is deemed to have been drawn from respective distribution licensees with consequential implications as per applicable provisions of EA, 2003 and relevant rules and relevant regulations. Appeal No.341/2018 and batch of appeals filed by SWPGL (generator) and its captive consumers challenging review order dt.22.10.2018 in case No.133/2018 partially allowing the review of main order dt.

19.3.2018 in case No.159/2016 in view of the difference in the data relied upon by the commission pertaining to supply of electricity to captive consumers from IPP Units 1 & 2 and data derived by MSEDCL with a direction to MSEDCL with active engagement of TPC-D and other distribution licensees to obtain the authenticated data from MSLDC and SWPGL and re-examine the same for determination of captive status of SWPGL for the financial year 2015-16.

APPEAL NO.205/2018

TPC-D has filed this appeal challenging main order dt. 19.3.2018 in case No.159/2016 declaring the captive status of units 3 & 4 of SWPGL for the FY 2015-16. It is submitted that the commission passed the impugned order on the basis of information supplied by SWPGL and also the derived data supplied by MSLDC. The commission examined twin conditions for determination of captive status of units 3 & 4 of SWPGL in terms of Rule 3 EA 2003 viz. The commission examined the issue of fulfillment of twin requirement by SWPGL i.e. 26% shareholding by captive consumers and consumption of not less than 51% of the electricity generated in identified captive units 3 & 4 determined on an annual basis in proportion to their shares in the ownership of the power plant within a variation not exceeding 10%. The commission has examined the shareholding pattern for verification of fulfillment of the said condition in respect of units 3 & 4 on the basis of auditor's certificate dt. 8.5.2015 certifying the shareholding pattern as on 1.4.2015 i.e. at the start of financial year as well as auditor's certificate dt. 18.6.2016 certifying the shareholding pattern as on 31.3.16 i.e. at the end of financial year 2015-16. The commission

has elaborated the shareholding pattern of SWPGL vide para 18.3 table-VI on the basis of such certificates submitted by SWPGL. The commission after due examination of the information provided by SWPGL regarding shareholding has concluded that the aggregate equity shareholding of the captive users meets the first requirement of Rule 3 of ER 2005 in as much as they held more than 26% equity shareholding in the units 3 & 4 in FY 2015-16. The relevant paras 18.5 to 18.8 on this issue are reproduced hereinbelow:-

“18.5 The Commission notes that the total number of equity shares issued to Captive Users works out to 5,38,94,339 as on 1 April, 2015 and 5,78,09,594 as on 31 March, 2016. Correspondingly, the total amount of the equity share capital works out to Rs. 53,89,43,390 and Rs. 57,80,95,940 (i.e. nominal amount of Rs. 10 per equity share) as on 1 April, 2015 and 31 March, 2016, respectively.

18.6 Table 6 above shows that, considering the Auditor's Certificates, the number of equity shares held by Captive Users of SWPGL at Sr. Nos. 1 to 12 was the same at the beginning and at the end of FY 2015-16 and it is presumed that it did not vary during the year. As regards Sr. Nos. 13 to 15, Spentex Industries Ltd. ('Spentex') (Sr. No. 13), which was a shareholder at the beginning of the year, exited thereafter and two new shareholders, viz. Hindustan Petroleum Corporation Ltd. (HPCL) (Sr. No. 14) and Lupin Ltd. ('Lupin') (Sr. No. 15) were added as shareholders holding Equity Shares with voting rights during the year. SWPGL has stated that changes in the equity shareholding

were intimated to the Distribution Licensees as and when they occurred. However, the dates on which Spentex exited and the new shareholders were inducted have not been provided by SWPGL in these proceedings.

18.7 Further, from the information of the implemented schedule of the Captive Users (and Table 1 earlier in this Order) furnished by SWPGL, it is observed that only Spentex did not consume any power from the CGP Units during the year. Accordingly, in line with the approach of the Commission in its previous Orders in Case No. 101 of 2014 (for FY 2013-14) and Case No. 77 of 2015 (for FY 2014-15), the Commission has considered only those Users who actually consumed energy from the CGP Units 3 and 4 in FY 2015-16. Spentex held 0.81% of the aggregate 14.68% equity shareholding held by Captive Users. Hence, even if Spentex, having exited, is not considered, the aggregate equity shareholding of the Captive Users would be more than 13% at the overall Company level with four Generating Units. Moreover, with the addition of the new shareholders HPCL and Lupin, the aggregate equity holding of the Captive Users would be well above 13% at the overall Company level (i.e. more than 26% of the Captive Units 3 & 4).

18.8 Therefore, based on the available information, the Commission concludes that the aggregate equity shareholding of the Captive Users meets the first requirement of Rule 3 of the Electricity Rules, 2005 inasmuch as they held more than 26% equity shareholding in the CGP Units 3 and 4 in FY 2015-16.”

The commission examined the fulfillment of 2nd condition of consumption of not less than 51% of the electricity generated in identified captive units 3 & 4 determined on an annual basis in proportion to their shares in the ownership of the power plant within a variation not exceeding 10%. The commission has vide para 19.8 taken note of the following omissions with regard to the availability of relevant information necessary for determination of captive status:-

- a. Absence of 15 minute time block recording through SEMs at each generating unit;
- b. Data collection only in respect of 220 kv outgoing transmission lines inspite of their being 4th independent generating units;
- c. Absence of regular downloading of meter readings and maintaining that record;
- d. Scheduling of partial OA consumers directly to MSLDC instead of through the distribution licensees;
- e. Change of injection source without appropriate approvals.

Consequently, commission proceeded to examine the fulfillment or otherwise of the said condition of consumption of electricity generated by unit 3 & 4 on the basis of available data supplied by SWPGL and MSLDC. The commission has noted that from the available data it is evident that in the months of April, July, August, January and February the actual captive consumption as submitted by SWPGL was more than the total net generation from the CGP units 3 & 4 in those months amounting to 55.73 MUs. It can therefore be inferred that this excess consumption was supplied to captive users from IPP units 1 & 2. Vide para 19.17 the commission concluded that units 3 & 4 of SWPGL satisfy the CGP criterion of at least 51% consumption in proportion to the shareholding of captive

consumers within +/-10% in accordance with second proviso to Rule 3(1)(A)(ii) of the Electricity rules 2005. Vide para 20 the commission finally concluded that SWPGL qualifies as a group CGP in FY 2015-16 in respect of its units 3 & 4 and therefore its captive consumers are entitled to the consequential dispensations including exemption from payment of CSS. It is relevant to mention here that while declaring the captive status of the SWPGL, the commission excluded 56.63 MUs injected from its IPP units 1 & 2 for supply of electricity to its captive consumers from the said dispensation treating it to be an unscheduled supply vide para 19.14 which is reproduced hereinbelow:-

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

It is also pertinent to mention here that commission assess the compliance of proportionality rule based on the gross generation and captive consumption (grossed up with auxiliary consumption) instead of the net generation and captive consumption at G <> T interface considered by SWPGL. And consequently disallowed units (56.63 MUs) which are adjusted from actual captive consumption. (Para 19.15 of impugned order)

Thus, the commission was constrained to use the data supplied by MSLDC and SWPGL inspite of the short comings already noted by the commission in the impugned order.

APPEAL NO.106/2018

This appeal filed by SWPGL (Generator) challenging the main order dt.19.3.2018 in case No.159/2016 limited to the extent that the commission declared 56.63 MUs to be unscheduled supply as the same was injected from IPP Units 1 & 2 and accordingly held that the power drawn by the captive consumers to that extent is deemed to have been drawn from respective distribution licensees with consequential implications as per applicable provisions of EA 2003 and relevant rules and relevant regulations. It is submitted that the commission declared the captive status of Units 3 &4 of SWPGL (appellant) after analyzing the data supplied by SWPGL and comparing it with the data supplied by MSLDC and available on its website. From the comparison of the said data the commission came to the conclusion that the 56.63 MUs were supplied from IPP units to the captive consumers of SWPGL and therefore disallowed the said quantum from the total sales to captive users. The commission has considered this issue and returned the said finding vide paras 19.12 to 19.14 which are reproduced hereinbelow:

“19.12 Table 9 shows that, in April, July, August, January and February, the actual captive consumption, as submitted by SWPGL, was more than the total Net Generation from the CGP Units 3 and 4 in those months, amounting to 55.73 MUs over FY 2015-16. Hence, it can be inferred that this excess consumption was supplied to the

Captive Users from the IPP Units 1 and 2, and cannot qualify as their captive consumption.

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

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

The commission has treated this as unscheduled supply in view of ABT order dt. 17.5.2007 (case No.42 of 2006) which provides that All Generating Stations (with unit size > 50 MW) excluding RE generating stations shall furnish their forecasted unit-wise availability schedule in respect of generating stations to MSLDC-OD on day-ahead basis for scheduling period of 15-minute duration i.e.

the availability schedule for each generating station shall cover unit-wise availability forecast schedule for 96 time blocks each of 15-minute duration for following day. It is submitted that during the hearing before this Hon'ble tribunal the appellant SWPGL had argued that the schedule to be provided was for the generation plant as a whole and not unit wise which is contrary to the said ABT order passed by the commission and binding on the appellant and all other stake holders.

APPEAL NO.341/2018

This appeal and batch of appeals filed by SWPGL(Generator) and its captive consumers impugning the order dt.22.10.2018 in case No.133/2018 partially allowing the review of main order dt. 19.3.2018 in case No.159/2016 for FY 2015-16 in view of the difference in the data relied upon by the commission pertaining to supply of electricity to captive consumers from IPP Units 1 & 2 and data derived by MSEDCL with a direction to MSEDCL to obtain the authenticated data from MSLDC and SWPGL and re-examine the same for determination of captive status of SWPGL for the financial year 2015-16 with active engagement of TPC-D and other distribution licensees.

That said impugned order was passed by the commission in view of the difference in the data relied upon by the commission pertaining to supply of electricity to captive consumers from IPP Units 1 & 2 and data derived by MSEDCL which was pointed out by MSEDCL to show the error apparent on record resulting into wrong determination of captive status of SWPGL. It was stated by MSEDCL in its review petition as a ground for review that the

commission considered 56.63 MUs only as supply from IPP units to the captive consumers whereas it is apparent from daily data filed by SWPGL itself that it was 118 MUs instead of 56.63 MUs. The commission accepted this ground for review and passed the impugned order in terms the findings in paras 7.3.4 to 7.3.6

“7.3.4 Having examined the contentions of the Respondent, the Commission has noted that MSEDCL has issues pertaining to the data considered by the Commission for the purpose of establishing the quantum of units injected from the IPP unit in the event of tripping of captive generating units. In this regards, MSEDCL has submitted data relating to supply from IPPs which is double the quantum considered by the Commission. MSEDCL has brought on record such gap by submitting data pertaining to the 118 MUs which has not been examined by the Commission earlier. MSEDCL has apparently derived this number from FBSM data of SLDC.

7.3.5 The Commission further notes that MSLDC (one of the Respondents in this matter) has neither made any comments on the data provided by MSEDCL nor has made any submission on this issue. It is expected from MSLDC that it shall verify the data provided by MSEDCL or give its comments on that.

7.3.6 In view of the new facts / information brought before the Commission by MSEDCL and further non –verification of the same data by MSLDC, the Commission accepts the submission of MSEDCL on this ground and allows the parties to make submission on this issue. The Commission directs MSLDC to verify and certify the data provided by MSEDCL within 10 days from this Order.

8. *In order to address the issues mentioned above, the Commission in its Order dated 17.01.2018 in Case No. 23 of 2017 has set out the modalities to be followed by the Distribution Licensees and the entities claiming to be CGPs. The Commission in that Order also stated that this is necessary in order to systematize the process and bring in greater clarity which would provide comfort to all the parties involved. The Commission had also observed in its earlier Orders in Case No. 117 of 2012 and Case No. 101 of 2014, and considering the provisions of the Electricity Rules, 2005, that the Group CPP must declare any change in the shareholding pattern of Captive Users at the start of the financial year and any subsequent changes during the year, along with the applications for Open Access from the Licensee, without which the concerned entity would not be considered as a Captive User.*

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

ORDER

1. *The Petition of Maharashtra State Electricity Distribution Co. Ltd. in Case No. 133 of 2018 is partially allowed.*
2. *The Commission directs MSEDCL to re-examine the status of SWPGL as CGP or otherwise based on guidelines issued in Case No. 23 of 2017 and the issues raised by MSEDCL in this Case. TPC-D should also be actively involved by MSEDCL in such re-examination process.*
3. *MSEDCL should get certified data from MSLDC as regards quantum of supply injected by IPP units and the proxy of G<>T ABT metering considered in the impugned Order to cover the data gaps in terms of non availability of unit wise Joint Meter Reading in order to re-examine the status of SWPGL as CGP.*
4. *MSEDCL should complete the above exercise within two months and inform SWPGL about its findings in a clear and lucid manner.”*

This Hon'ble Tribunal also raised certain queries from the commission and directed a return note to be submitted thereon. Accordingly, the commission submitted the desired written note but in order to facilitate the hearing and for the convenience of this Hon'ble Tribunal, the commission would like to submit the following :-

- a. **Has the commission prescribed any procedure for determination of CGP status?**

It is submitted that the commission vide its order dt. 17.1.2018 in case No.23 of 2017 in Para (19) has prescribed the following modalities for determination of captive status:-

“19 (a) At the outset, when Open Access is first sought, details of the shareholding pattern of the claimed CPP shall be submitted in the context of the provisions of the Electricity Rules, 2005, supported by a Chartered Accountant (CA)’s Certificate. In the event of any change in the shareholding pattern during the financial year, the revised shareholding should be intimated to the concerned Distribution Licensee(s) within 10 days, with CA certification. The CA’s Certificate should contain details of all shareholders, including the Captive Users, and their voting rights. In case there is no change in the shareholding pattern during the financial year, the Generators should provide an undertaking to that effect along with the CA Certificate as at the end of the year.

b) Each CPP Generating Unit shall have a separate Special Energy Meter (SEM) as per the specifications in the Central Electricity Authority (CEA) (Installation and Operation of Meters) Regulations, 2006 as amended from time to time. The monthly reading data at the Generation Transformer EHV level, outgoing feeder level and that of auxiliary consumption should be submitted to the Distribution Licensee(s) and to MSLDC in hard and soft versions. Downloading of monthly data of all these meters shall be jointly undertaken by the Generator and Distribution Licensee(s), and the State Transmission Utility (STU) (if relevant). Similarly, the sealing of the respective meters, their testing, etc. should also be jointly undertaken by the Generator, Distribution Licensee(s) and the STU (if relevant), and appropriately certified. The general practice

adopted for any HT consumer monthly meter reading should be followed.

c) The SEM meters should be tested periodically as per the prescribed testing procedures.

d) Tripping events of the CPP Generating Unit should be informed to the Distribution Licensee(s) and MSLDC along with the period of outage. Power from the non-CPP Units shall not be injected into the grid without appropriate permissions of the respective authorities.

e) By the 30th of April, the Generator shall submit all the relevant data required for establishing its CPP status in the previous financial year. The data shall include the quantum of generation at the Generator Terminal, auxiliary consumption, consumption recorded at the EHV side of the Generator Transformer, the consumption recorded at the outgoing feeders and the consumption of captive consumers grossed up at the Generator Terminal level (along with the necessary computations). This data shall be provided for each month of the financial year, in Excel format.

f) The Distribution Licensee(s) shall seek clarifications, if any, and confirm the CPP status or otherwise by 31 May. In case any clarifications required are not received or are inadequate, the Distribution Licensee(s) shall jointly decide on the CPP status and inform the Generator accordingly.

g) If the Generator is not satisfied with the status as determined by the Distribution Licensee(s), it may approach the Commission by 15 June. In that event, the Distribution Licensee(s) shall not levy CSS and Additional Surcharge, if any, till the final decision of the Commission.

h) If the Generator does not approach the Commission by 15 June with any dispute regarding its CPP status, the Distribution Licensee(s) may proceed to levy the CSS and Additional surcharge, if any, with applicable interest. This shall be without prejudice to the Generator's statutory right to approach the Commission for adjudication of its dispute after that date."

b. **Is the unit wise installation of meters in terms of CEA Metering Regulations relevant for determination of CPP status?**

Installation of unit wise SEM and the data of generation and supply unit wise is very relevant for the purpose of determination of captive status. It is a matter of record that since 2014 SWPGL or SLDC could not furnish unit wise data and therefore the commission in its order dt. 22.10.2020 in case No.175/2017 vide Para (20.70) has ordered an internal inquiry in the following terms:

"20.70 In light of the above, the Commission deems it appropriate to order an internal enquiry by these Licensees to find out whether there have been any lapses by the concerned officials, on the various issues highlighted above and why the compliance of the Commission's Orders / Regulations / Relevant Metering Code / CEA Regulations were not done in true letter and spirit while dealing with SWPGL matter. The said administrative enquiry shall be conducted by Senior Management of STU, MSLDC, MSEDCL and TPC-D, fixing the responsibility, if needed and report of the outcome of the

enquiry along with the details of corrective actions taken shall be submitted to the Commission within six months of the Order. However, it would not be out of place to mention here that the enquiry ordered being an independent departmental proceeding with the sole purpose of verifying the relevant compliance by the Licensees and to fix responsibility on the concerned officials for the lapses if any found at the end of the enquiry, the outcome of the Enquiry Report does not absolve SWPGL of any of the shortcomings/failures/deficiencies on its part as recorded in this Order. Also, it will have no bearing whatsoever, on the liability of the Captive Users to pay CSS and ASC, if it is concluded in this Order that the captive compliance is not fulfilled.”

The following provisions are relevant for answering the aforementioned queries raised by the Hon'ble Tribunal:

- a. Regulation 14(3) of CEA Metering Regulations 2006 deals with the obligation of recording and maintenance of metered data base. The said regulations is reproduced hereinbelow:-

“14(3) Energy accounting and audit meters It shall be the responsibility of the generating company or licensee to record the metered data, maintain database of all the information associated with the energy accounting and audit meters and verify the correctness of metered data. Each generating company or licensee shall prepare quarterly, half-yearly and yearly energy account for its system for taking appropriate action for efficient operation and system development.”

This regulation makes it clear that it was the obligation of SWPGL to record and maintain the metered data base with all requisite information. The said obligation was not discharged by SWPGL which is evident from the fact that SWPGL did not have unit wise metered data for determining its captive status and rather sought determination of captive status on the basis of derived data available with MSLDC. Further, the requirement of unit wise SEM is also mentioned in Regulation 17 of DOA Regulations 2016 which is reproduced hereinbelow:-

17. Metering and Communication

17.1. All Open Access Consumers and Generating Stations shall install Special Energy Meters ('SEM's): Provided that any existing or prospective Consumer who has not sought Open Access but desiring it shall have the option to install such SEM at his premises.

17.2. Such Consumers or Generating Stations may procure the required SEM from any supplier in accordance with the standards and specifications stipulated in the Regulations of the Central Electricity Authority governing the installation and operation of meters.

17.3. The Consumer or Generating Station may also procure the required SEM from the Distribution Licensee; Provided that, upon receipt of such request, the Distribution Licensee shall communicate the lead time for its procurement of such SEM in case it is not available with it so as to enable the

Consumer or Generating Station to finalise its option for purchase: Provided further that, if the Consumer or Generating Station chooses to purchase the SEM from it, the Distribution Licensee may require the payment of an advance not exceeding its price.

17.4. The Distribution Licensee shall test and install such SEM within sixty days from the receipt of a request from the Consumer or Generating Station, as the case may be.

17.5. The Distribution Licensee shall be responsible for reading the SEM at least once in every month: Provided that the authorized representative of the Consumer, Generating Station or Licensee, as the case may be, shall be entitled to be present at the time of meter reading.

17.6. The SEM along with associated equipment shall be available for inspection by the Distribution Licensee at any time.

17.7. The metering points for provision of Open Access for the Consumer, Generating Station or Licensee, as the case may be, shall comply with the provisions of the State Grid Code.

17.8. All Full Open Access Consumers and Generating Stations connected to the Transmission System shall install, at their cost, Remote Terminal Units (RTU)-DC within six months from the notification of these Regulations, in accordance with specifications provided by the STU; and the MSLDC shall verify their installation for real-time monitoring: Provided that the installed RTU-DCs shall be available for inspection by the Distribution Licensee or the MSLDC at any time: Provided further that such Full Open Access

Consumers and Generating Stations connected to Transmission Systems shall provide for or bear the cost of communication arrangements, the technical specifications of which shall be stipulated by the Distribution Licensee and/or MSLDC, for the purpose of real-time communication.

17.9. The Distribution Licensee to whom the Consumer or Generating Station is connected shall be responsible for providing the energy meter data to the MSLDC for the purpose of energy accounting.

17.10. If the Distribution Licensee establishes a distribution control centre similar to MSLDC, it may install communication and metering infrastructure at its own cost.”

It is thus clear that it was the responsibility of SWPGL to install the unit wise SEM and record and maintain its data for determination of its captive status.

c. **Is declaration of a particular unit/units for captive status to be identified at the threshold?**

From Rule 3 itself it is evident that the special purpose vehicle is required to identify at the threshold the captive unit/units for the purposes of open access under Section 9(2) of Electricity Act, 2003. This is also clear from the modalities provided by the commission in its order dt. 17.1.2018 in Case No.23/2017.

The appellant SWPGL and its captive consumers in their respective appeals are also seeking the remand of the cases for fresh

determination of captive status of SWPGL for the years 2014-15 & 2015-16 by applying the law laid down by this Hon'ble Tribunal vide judgment dt.7.6.2021 in appeal No.131/2020 titled as Tamil Nadu Power Producers Association Vs. Tamil Nadu Electricity Regulatory Commission.

The commission submits that the said judgment may not be made applicable to the appeals at hand on the following grounds:-

Before making legal submissions in support of the above contention, it would be necessary for giving a brief factual backdrop in which the said judgment was passed by Your Lordships. The said judgment has been passed by this Hon'ble Tribunal while examining the order dt. 28/1/2020 passed by Tamil Nadu Electricity Regulatory Commission in R.A. No.07/2019 whereby Tamil Nadu commission prescribed a procedure for verification of status of captive users and captive generating plant (CGP) located in the State of Tamil Nadu in compliance of the directions of Hon'ble High Court of Madras.

- a. **Applicability of the said judgment is against the doctrine of prospective overruling adopted by hon'ble apex court in catena of judgments.**

It is submitted that the judgment in Tamil Nadu Case overruled the earlier judgment dt. 22.9.2009 of this Hon'ble Tribunal in appeal No.171/2008 titled as *Kadodara Power Pvt. Ltd. &Ors. Vs. Gujarat Electricity Regulatory Commission* holding it to be "per-incuriam".

In the said Kadodara Case the manner of determination of captive status and compliance of Rule 3 was considered and adjudicated upon. Though the said judgment has been held to be per incuriam by Your Lordships in Tamil Nadu Case, appeal against Kadodara judgment is pending before Hon'ble Apex Court. It is further submitted that adjudication by the respondent Commission is much prior in time to the Tamil Nadu judgment and therefore by operation of doctrine of prospective over ruling well settled by Hon'ble Apex court, this judgment may not be applied to the present appeals. The respondent Commission craves leave to rely upon the following judgments in support of this submission:-

- i. ***I.C. Golak Nath &ors. Vs. State of Punjab &Ors. (MANU/SC/0029/1967) (Relevant paras 60, 75-78) equivalent citation (1967 AIR 1643).***
- ii. ***Synthetics and Chemicals Ltd. &ors. vs State of UP &ors. [1990(1) SCC 109]***
- iii. ***Somaiya Organics (India) Ltd. &Ors. vs State Of Uttar Pradesh &Anr. [(2001)5 SCC 519] (Relevant paras 22-30 & 33-41)***

It is submitted that in view of the aforementioned judgments, the contention of the appellant that the cases at hand are covered by Your Lordships judgment in Tamil Nadu case is untenable and against the law laid down by Hon'ble Apex Court.

B) That the claim of the appellants both before the commission as well as before this Hon'ble Tribunal is not

based on the law laid down by this Hon'ble Tribunal in the said judgment:-

This Hon'ble Tribunal while dealing with issue No.3 declared the judgment rendered by coordinate bench of this Hon'ble Tribunal in Kadodara's case as per incuriam and held that the requirement of 51% consumption of electricity generated in proportion to their shares in ownership of the power plant within a variation not exceeding ten per cent is not applicable to a SPV. This Hon'ble Tribunal has returned this finding vide para 12.13 & 12.14 of the said judgment at internal pages 139-140.

“12.13 We have analyzed the submissions of the parties on the issue of treatment of an SPV as an AOP. As seen before, Rule 3 of the Rules deals with the requirements to be fulfilled to qualify as a captive. In the said rule, SPV as a CGP is given under Rule 3(1)(b). Further, it is also seen that Rule 3(1)(a)(i) has two provisos contemplating the manner in which the requirements to qualify as a CGP is to be fulfilled by a registered Co-operative society and an AOP. It is also seen that the said two provisos do not relate to Rule 3(1)(b) which deals with a SPV.

12.14 We agree with the submission put forward by the Appellant that second proviso to Rule 3(1)(a) is a stand-alone provision and as such does not relate to Rule 3(1)(b). The Parliament in its wisdom has created an intelligible differentia under Rule 3, between a SPV and an AOP. It is clear from a reading of Rule 3 that second proviso to Rule 3(1)(a) which exclusively deals with an AOP, lays down that the captive user(s)

shall hold not less than 26% ownership of the plant in aggregate and shall not consume less than 51% of the electricity generated, determined on an annual basis, in proportion to their ownership of the power plant. On the other hand, Rule 3(1)(b) exclusively deals with a SPV, and it only provides that the conditions mentioned in Rule 3(1)(a)(i) and (ii) are applicable to a SPV, with the second proviso not mandated to be applied to it. Thus, we find force in the argument of the Appellant that second Proviso to Rule 3(1)(a) is a stand-alone provision.”

Thus, it was held by this Hon'ble Tribunal in TNERC judgment that requirement of proportionality for analyzing the consumption of 51% of the aggregate generated electricity by the identified captive unit/units of a SPV is not applicable in the case of SPV. It was further held by this Hon'ble Tribunal that the condition of consumption of 51% of aggregate generated electricity has to be met by the consumers of SPV collectively on par with the registered cooperative society. A perusal of the petition filed by the appellant for determination of its captive status for the year 2014-15 before the commission in case No.77/2015 reveals that the case of the petitioner is based on the applicability of following twin conditions including the proportionality of consumption:-

- “i) not less than twenty six percent of the ownership is held by the captive user(s) and;
- ii) not less than fifty one per cent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use.

In this regard Para (12) of the petition annexed with the appeal at Page 80 (Appeal No.340/2018) is reproduced hereinbelow:-

“In terms of the above, it is stated for the year 2014-15, the petitioner had fulfilled the captive status for its generating units and for the supply of electricity to its captive consumers. It is stated that in terms of Rule 3 of Electricity Rules 2005 the shareholding is to be considered not less than of 26% and consumption of not less than 51% of annual generation. The compliance with regard to proportionality is within the permissible limit of 10%.”

The grounds and the prayers made in the above noted appeal also are not based on the aforementioned law laid down by this Hon'ble tribunal in the said judgment and therefore the appellant cannot seek benefit of the applicability of the said judgment.

Likewise a perusal of the petition filed by the appellant for determination of its captive status for the year 2015-16 before the commission in case No.159/2016 reveals that the case of the petitioner is based on the applicability of following twin conditions including the proportionality of consumption:-

- “i) not less than twenty six percent of the ownership is held by the captive user(s) and;
- ii) not less than fifty one per cent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use.

In this regard Para (12) of the petition annexed with the paperbook of appeal No.341/2018 at Page 81 is reproduced hereinbelow:-

“In terms of the above, it is stated for the year 2015-16, the petitioner had fulfilled the captive status for its generating units and for the supply of electricity to its captive consumers. It is stated that in terms of Rule 3 of Electricity Rules 2005 the shareholding is to be considered not less than of 26% and consumption of not less than 51% of annual generation. The compliance with regard to proportionality is within the permissible limit of 10%.”

The grounds and the prayers made in the above noted appeal also are not based on the aforementioned law laid down by this Hon'ble tribunal in the said judgment and therefore the appellant cannot seek benefit of the applicability of the said judgment.

It is settled legal principle that the case of the parties has to be restricted to the pleadings and on this principle also the appellant cannot now seek the applicability of the said judgment of this Hon'ble Tribunal.

Reliance is placed on the judgment dt. 23.9.2008 passed in Civil Appeal No.23766-67 of 2005 titled as ***Bachhaj Nahar Vs. Nilima Mandal &Ors. reported as (2008)17 SCC 494*** (Relevant paras 10-11)

C) The judgment of this Hon'ble Tribunal in Kadodara's case is pending consideration before the Hon'ble Apex court and therefore judgment of this Hon'ble Tribunal in TNERC

case may not be made applicable without the adjudication by Hon'ble Apex Court.

It is submitted that admittedly, the judgment in Kadodara's case is pending consideration before Hon'ble Apex Court which has been declared per incuriam by this Hon'ble Tribunal in TNERC Judgment. Further, the appellant Sai Wardha has also challenged the judgment dt.17.5.2016 of this Hon'ble Tribunal passed in appeal No.316/2013. The said judgment was passed by this Hon'ble Tribunal by applying the principles of Kadodara judgment for the purpose of determination of captive status of appellant and its consumers for year 2012-13. The said judgment has been challenged by way of Civil Appeal No.12282 of 2016 which is still pending before Hon'ble apex court. Under these circumstances disposal of these appeals on the basis of the judgment dt. 7.6.2021 in TNERC Case passed by this Hon'ble tribunal would lead to multiplicity of litigation. In addition, if the appeals in question are disposed by remanding the cases for fresh determination of captive status of the SWPGL for the respective years on the basis of legal principles laid down by this Hon'ble Tribunal in the said judgment, a situation may arise in which the order passed by the respondent commission on that basis on remand of the case may come in conflict with any judgment passed by Hon'ble Apex Court in the pending appeals against kadodara judgment. Such a situation is not in conformity with the principles of judicial consistency.

Submissions of learned senior counsel Mr. Basava Prabhu S. Patil

206. In terms of factual matrix and the extant regulatory framework, Maharashtra Electricity Regulatory Commission (“Ld. Commission”) in Case No. 175 of 2017, filed by Respondent No. 3 i.e., M/s Sai Wardha Power Generation Limited (“SWPGL”), in its Order dated 22.10.2020 (“Impugned Order”) has rightfully held that SWPGL’s power plant i.e., 2x135 MW generating plants of Unit 3 and Unit 4 (“Power Plant”) does not qualify as a Captive Generating Plant (“CGP”) for FY 2016-17

207. Aggrieved by the Impugned Order, the consumers of SWPGL have challenged the Impugned Order before this Hon’ble Tribunal. A list of all the Appeals challenging the Impugned Order has been annexed herewith as Annexure A-1. The Appeal filed by the consumers primarily is premised on the following set of issues-

- a. Reliance on Insolvency and Bankruptcy proceedings pertaining to SWPGL.
- b. Consumers of SWPGL meet the Rule of Proportionality (“ROP”) criteria.
- c. Special Energy Meter (“SEM”) reading obligation had been complied with by SWGGL

208. Notably, during the pendency of the present Appeal, this Tribunal pronounced its Judgment dated 07.06.2021 in Appeal No. 131 of 2020 (TNPAA Vs. TNERC &Ors.) (“TNPAA Judgment”), wherein the Judgment of this Hon’ble Tribunal dated 22.09.2009 in Kadodara Power Pvt. Ltd. v. GERC &Ors. (“Kadodara Power Judgment”) (which was one of the precedents relied upon by the Ld. MERC in the present Impugned Order) has been held as ‘per incuriam’. This

Hon'ble Tribunal whilst adjudicating this issue has erroneously relied on the following rationale:

- a. Shareholding as on the end of the financial year shall be considered for the purpose of determining the captive status. Thus, shareholding and consumption by incoming and outgoing shareholders during the financial year is irrelevant and the only relevant factor is the shareholding pattern at the end of the financial year. Consequently, there is no question of taking into account 'weighted average shareholding'.
- b. Rule 3(1)(b) of the Electricity Rules, 2005 ("Electricity Rules") alone provides for the eligibility criteria to be fulfilled by a 'Special Purpose Vehicle' ("SPV") and a 'company' for claiming status of the CGP. Rule 3(1)(a) and Rule 3(1)(b) of the Electricity Rules are standalone provisions and therefore, the proviso to Rule 3(1)(a) cannot be applied to Rule 3(1)(b). Consequently, the ROP as stipulated 2 under the second proviso to Rule 3(1)(a) in relation to the CGP owned by an 'association of persons' is inapplicable to the Rule 3(1)(b), which governs the CGP owned by 'special purpose vehicles' (Paragraphs 12.13 to 12.16 @ pages 139 to 143 of the TNPPA Judgment)
- c. An 'association of persons' cannot be equated with an SPV i.e. 'association of persons' is an unincorporated entity and an SPV is a registered company. This Hon'ble Tribunal also relied on taxation case laws for coming to the conclusion that 'association of persons' and 'a company formed as special

purpose vehicles' are distinct entities. (Paragraphs 12.17 to 12.19 @ pages 143 to 148 of the TNPPA Judgment)

209. The Appellant herein filed an Urgent Listing Application along with a Memo placing reliance on the TNPPA Judgment and pleaded that in light of the findings of this Hon'ble Tribunal in the TNPPA Judgment, the present Appeal maybe disposed of. It is imperative to note that the findings of this Hon'ble Tribunal in the TNPPA Judgment are against the settled principles of law and in contravention of the intent of the legislation. Furthermore, without prejudice, even if the TNPPA Judgment has held the Kadodara Power Judgment as 'per incuriam', this Hon'ble Tribunal may still follow the reasoning as established under the Kadodara Power Judgment as a mere declaration by a coordinate bench does not render a previous judgment bad in law. The Respondent No. 4 has relied upon the interpretation of Rule 3 of the Electricity Rules as observed under the Kadodara Power Judgment and built its response around the same on merits

Statutory framework and its interpretation

210. Section 2(8) of the Electricity Act, 2003 ("Act") defines 'Captive generating plant' as:

"Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any cooperative society or association of persons for generating electricity primarily for use of members of such cooperative society or association"

It is well settled that usage of expression 'means' and 'includes' in the definition makes it exhaustive.¹

Notably, a distinction is evident in the definition of a CGP between 'personal use' and 'use primarily for its members'. Pertinently, if any entity (person) uses the power plant for 'its own use', it implies thereby that the power is consumed for the entity's own business or purpose and not that of others. In that case, there will be no room for any debate that the said power plant is a CGP in as much as the power will be consumed for benefit of the entity itself and not for its members. However, there is another class of 'usage' provided in definition i.e. 'use primarily for its members' wherein the members may utilize the power for its personal use. This second class of usage is permitted in case of power projects set up by a co-operative society or an association of persons. However, what would constitute 'primary use' has not been provided under the Act, the same having been set out under Rule 3 of the Electricity Rules. Therefore, even a plain reading of the definition of 'captive generating plant' leaves no room for doubt that the definition is exhaustive and covers two classes of usages:

- a. Use of the power plant by an entity setting it up for its own business purpose and not that of its members.
- b. Usage of the power plant primarily by members of 'association of persons' or 'cooperative society' in accordance with Rule 3 of the Electricity Rules.

The definition of a CGP does not provide for 'special purpose vehicles' or 'company' as a separate class. Notably, the definition of 'person' under the Act is wide enough to include 'companies' 'co-operative society', 'association of persons'. However, the definition of 'CGP' is exhaustive and explicit in the creation of two classes of usages as detailed above. A company, if it consumes power primarily for its business, would no doubt satisfy the requirement of captive generation since it would be falling in first class of the usages. However, the second class is applicable only to 'association of persons' and 'co-operative society'. The only purposive and logical conclusion which is necessarily implied is that the expression 'company' is included within the definition of 'association of persons'. In light of the above, it is submitted that the legislature intended to use the expression 'association of persons' in its ordinary sense and usage and not in a restrictive manner so as to include only unregistered entities.

It is well settled that, unless repugnant to the context or unless it leads to absurdity or incongruity or conflict within the statute, the words used in legislation must be understood in its plain and ordinary sense. The same principle will apply to the expression 'association of persons' used in section 2(8) of the Act and 2nd proviso to Rule 3(1)(a).

210. Now, coming to Rule 3 of the Electricity Rules, it casts twin obligations for a power plant to qualify as a CGP. These two qualifying criteria are applicable universally to all CGPs irrespective of the nature of entities owing it:

- a. not less than 26% of the ownership must be held by the captive user(s) (“Ownership criteria”); and
- b. not less than 51% of the aggregate total electricity generated in the plant, determined on an annual basis, is consumed for captive use (“Consumption criteria”).

211. The Ownership Criteria and Consumption Criteria are the qualification touchstones required to be met for a generating station to acquire the status of a CGP. If, in any financial year, a generating plant is able to meet these two criteria, it shall qualify as a CGP and will be entitled to such benefits as allowed under the extant statutory and regulatory framework. However, if it fails to meet these two sets of qualification criteria, it cannot claim the status of a CGP and the resultant effect being that the consumers of such plant would have to pay a Cross Subsidy Surcharge (“CSS”) for procuring electricity from such generating plant.

212. The question whether ownership criteria and/or the consumption criteria is/are required to be satisfied at the beginning of the financial year or at the end of it, is also relevant to be decided in the present matter. It is submitted that perusal of the definition of ‘CGP’ makes it clear that a power plant would qualify as a CGP only if it has been ‘set up’ for consumption by an entity or ‘primarily’ by its members. The expression ‘set up’ clearly reflects the legislative intention that the entity must, at the beginning of the financial year itself, demonstrate that the same has been set up for ‘primary’ usage of its members. Accordingly, the ownership requirement of 26% must be established at the beginning of the year itself and

must not be breached throughout the year. However, there may be circumstances of changes in the shareholding pattern throughout the year leading to exit of some captive users and addition of others. However, no dispensation is provided under the legislative framework to cover such contingency. It is submitted that the concept of 'weighted average methodology' is then applied by the commission to arrive at the average shareholding of each shareholder and the cumulative shareholding of captive users throughout the financial year in order to ascertain whether the ownership qualification is maintained by a power plant throughout the year.

213. In contrast to the Ownership criteria, the Consumption Criteria is the condition subsequent which, by its very nature can only be evaluated annually by the Ld. Commission at the end of the financial year. This understanding has also been corroborated by the Hon'ble Madras High Court in *Madura Coats Pvt. Ltd. v. ARKAY energy (Rameswaram) Ltd.* In judgment dated 8.12.2009.

214. In addition to the above two universal conditions, the condition of 'Consumption Criteria' is applied differently to power plants set up by a registered co-operative society. In case of a CGP set up by a registered co-operative society, the consumption of 51% energy is permitted to be satisfied by the members of co-operative society irrespective of the percentage of consumption amongst these members. This exemption is applicable only in case of 'registered co-operative society' for the reason that firstly a co-operative society requires minimum 10 members for incorporation and even more in case of a registered co-operative society, secondly, there are

restrictions on the percentage of shareholding by individual members in most of the states and thirdly, there are restrictions on transfer of shares by a member to a non-member in case of a registered co-operative society. On account of this apparent contradistinction between a company or any other association of persons on one hand and co-operative society on the other, the first proviso to Rule 3(1)(a)(ii) does not apply the ROP to 'association of persons', which expression includes companies. The ROP is provided under the second proviso of Rule 3(1)(a)(ii) of the Electricity Rules, which provides that captive users must individually consume power in proportion to their respective shareholding. The said ROP is intended to ensure that members forming an association of persons also consume electricity to the extent of its shareholding/investment in the association.

215. Rule 3(1)(b) of the Electricity Rules provides dispensation applicable to a specific situation where a power plant is set up by an SPV and 'only a unit or units of such generating station and not the entire generating station' is/are intended to be used captively. Thus, Rule 3(1)(b) is applicable only when the entire project is not used captively but one or more of the units are used captively. It is only to cover such a unique contingency that Rule 3(1)(b) has been provided. Rule 3(1)(b) is not applicable to power plants set up by SPV, where the entire power plant is set up for captive usage. Thus, it would be absurd to contend that SPVs are dealt with separately under Rule 3(1)(b) and are not covered under Rule 3(1)(a), in as much as it will lead to an incongruous result where there will be no provision left to provide eligibility for SPV or a company setting up

power plant where 100% of power is intended to be consumed captive.

216. Moreover, another relevant aspect of Rule 3(1)(b) is that it only provides for 'company set up as an SPV' and not any other company. It is incontrovertible that not only an SPV², but also an existing company carrying out other business may set up a captive power project. If the argument that a 'company' is different from an 'association of persons' is accepted, it will again lead to incomplete and incongruous result in as much as no rule would then be left to govern setting up of a CGP by an existing company (not being an SPV), which could not have been the legislative intent.

217. It is also relevant to submit that the conditions stipulated in Rule 3 of the Electricity Rules ought to be given a strict interpretation since it entitles consumers (captive users) exemption from the general rule of paying CSS and other charges. An exception, as is

well settled, has to be interpreted strictly, the burden of proving which lies on the party invoking the same. Notably, one of the reasons which weighed this Hon'ble Tribunal in holding in the TNPPA judgment that the ROP is not applicable to SPV and an SPV cannot predict the change in shareholding throughout the year.³ It is also observed in the judgment that an SPV will be put to great hardship in maintaining its captive status if changes in shareholding is taken into account throughout the year and accordingly it was held that the ownership criteria only at the end of the year must be considered while ignoring the ownership pattern and changes throughout the year. This reasoning in the TNPPA

judgment, with great respect, is absurd for the reason that the qualifications provided in Rule 3 of the Electricity Rules are only minimum qualifications. Any entity interested in setting up captive status must plan its ownership and consumption well in advance so that the minimum threshold is maintained. Prudence demands that the entity interested in claiming captive status for its project, maintains ownership in excess of the minimum threshold so as to leverage the risk in maintaining the shareholding.

218. This Tribunal in its Order dated 30.04.2013 in Review Petition No. 2 of 2013 in Appeal No. 137 of 2011 titled JSW Energy Ltd. &Anr. v. KERC &Ors. [Para 14 – 18] has held that a captive user is required to identify the unit/ units intended for captive consumption at the time of induction of equity stage itself. Hence, assessment of equity shareholding is a Condition Precedent. This Rule seeks to prevent captive users from indulging gaming and identifying any unit as captive depending upon its own consumption during the relevant year. In this hindsight, this Hon'ble Tribunal's finding in the TNPPA Judgment that verification of 26% equity shareholding [in terms of Rule 3(1)] shall be done only at the end of the financial year and that there is no requirement for submission of Chartered Accountant Certificate or intimate change in shareholding, is contrary to the following regulations

- a. Rule 3(1)(a)(i) of the Electricity Rules – Condition Precedent requiring not less than 26% of the ownership in the CPP being held by the captive users. This qualification to be maintained not only at the beginning but throughout the Financial Year.

- b. MERC (Distribution Open Access) Regulations 2014 (Reg. 9.2); 2016 (Reg. 8.5), as well as the MERC (Distribution Open Access) (First Amendment) Regulations 2019.

219. Unless suitable safeguards are built, the TNPPA Judgment may permit captive users to artificially adjust their equity shareholdings at the end of the Financial Year to enjoy the benefits of exemption from payment of CSS. Without prejudice, even if 26% is to be verified only at the end of the Financial Year, there shall be no distinction between granting Open Access under Sections 9 and 10 of the Electricity Act.

220. The MERC Distribution Open Access Regulations, inter alia, provide for submitting a Certificate from a Chartered Accountant with regard to shareholding pattern along with the Application for Open Access under captive mode. The documents required to be submitted along with the application are for the purpose of determining the eligibility for open access sought by any applicant and thus cannot be construed as a mere formality. Furthermore, intimation of change in shareholding during the Financial Year is essential to validate whether the captive users held 26% equity share capital in the CPP throughout the year.

221. If this Hon'ble Tribunal concludes that the Appeals at hand are covered by the TNPPA Judgment, the MERC Distribution Open Access Regulations will effectively be rendered invalid without any challenge having been made to the same and without jurisdiction since vires of Regulations is beyond the jurisdiction of this Hon'ble Tribunal. [PTC India Ltd. v. CERC, (2010) 4 SCC 603 and Century

Rayon v. MERC &Anr. 2020 SCC OnLine APTEL 5 (Paras 29 – 38)]”

222. In light of the above it is respectfully submitted that, the only reasonable interpretation of Rule 3 read with Section 2(8) is that:

- c. Expression ‘association of persons’ includes ‘company’ within its scope and the qualification requirement applicable to ‘association of persons’ is equally applicable to ‘Company’ also irrespective of it being an existing company or an SPV.
- d. Rule 3(1)(b) covers a special contingency where some units and not all, are used for captive purpose. Rule 3(1)(b) does not provide qualification criteria of a power plant set up by a ‘company’ but only governs a special contingency. The qualifications provided in Rule 3(1)(a) are expressly made applicable to such contingency also.
- c. The ownership criteria is required to be met at the beginning of the financial year and needs to be maintained throughout. In case of changes in shareholding pattern, weighted average shareholding ought to be taken into account.

Importance of Kadodara Power Judgment

223. The Kadodara Power Matter was a batch matter arising from the same common order of Gujarat Electricity Regulatory Commission (“GERC”) and also pertained to the captive status of some power

generation units of generator operating as an SPV This Hon'ble Tribunal framed the following issues and dealt with each of them separately:

- (i) Is a company formed as a special purpose vehicle an association of person?
- (ii) How proportionality of consumption has to be assessed?
- (iii) Can the ownership of the CGP be transferred after its set up?
- (iv) Is any license required for the CGPs to transmit power from the CGP to the members of special purpose vehicle / the captive user?
- (v) Whether shareholder qualifies to be a captive user?
- (vi) Can the ownership of the CGP be transferred after its set up?

224. It is noteworthy that the Kadodara Power Judgment had become the cornerstone in the sector and many later judgments of various forums across India have cited and relied upon the Kadodara Power Judgment, in so far as the verification criteria for captive status of an SPV and the applicability of ROP was concerned. The Kadodara Power Judgment delved in the very aspect of why an SPV ought to be regarded as an 'association of persons' and also ascertained the manner in which the computation for the same needs to be carried out whilst applying the ROP. The relevant portion of the Kadodara Power Judgment has been reproduced herein below:

“15.....A special provision has been made permitting a cooperative society from consuming 51% collectively. The first

proviso 3 (1)(a)(ii) itself suggests that a special privilege has been conferred on a cooperative society. Other persons who are also legal entities formed by several persons coming together have not been given such special privilege. Who can such association of persons be? Of the various legal entities comprehended as persons owning a CGP the special purpose vehicle does seem to fit the description of 'association of persons'. We fail to comprehend who other than a special purpose vehicle can be an 'association of persons'. None of the lawyers arguing before us gave example of 'association of persons' other than a special purpose vehicle. Therefore, we have no hesitation to hold that special purpose vehicle is an association of persons.

16) In case the special purpose vehicle was not required to maintain the rule of proportionality of consumption, the Central Government could have specifically mentioned the same just as it has done for a cooperative society. The Rule having not exempted a special purpose vehicle from the requirement of consuming 51% of the generation in proportion to the ownership of the persons forming the special purpose vehicle as has been done in the case of cooperative society it will only be rational and logical to hold that a special purpose vehicle is also subject to the rule of proportionality of consumption to the percentage share of ownership as an 'association of persons'."

225. The aforementioned rationale has been elaborately discussed by this Tribunal in Appeal No. 311 of 2018 JSW Steel Ltd. And Ors. Vs.

Secretary, MERC and Anr.as well as in Appeal No. 316 of 2013 Sai Wardha Power Company Limited Vs. MERC and Ors.. It is imperative to note that the TNPAA Judgment, though has declared the Kadodara Power Judgment as 'per incuriam', but in effect has rendered all those judgments which have been passed relying upon the rationale established in the Kadodara Power Judgment, as 'per incuriam'. This Hon'ble Tribunal has consistently relied upon the rationale propounded in the Kadodara Power Judgment and therefore, it is the TNNPA Judgment which ought to be rendered as 'per incuriam' for vitiating the cardinal principles of adjudication of disputes.

226. In the instant matter by relying of the findings in the Kadodara Power Judgment, it is clear that since the Power Plant does not qualify as a CGP, the shareholders of SWPGL who formed part of the captive structure and sought open access in FY 2017-18 including the Appellant herein are liable to pay CSS and other applicable charges to distribution licensees.

Law / Jurisprudence around principle of 'Stare Decisis' and 'per incuriam'

227. The adjudicatory forums have consistently been of the opinion that there must be a general restraint in dissenting a judgement of a coordinate bench for uniformity and consistency in law and of precedents commonly known as the principle of 'stare decisis'. In the landmark judgement, A.R. Antulay v R.S. Nayak and Ors (1988) 2 SCC 602, the Hon'ble Supreme Court held that there must be a judicial discipline to maintain consistency and recalling an order of a

coordinate bench must be done in 'rare of the rarest cases'. This Hon'ble Tribunal in the TNPPA Judgment, which has held the Kadodara Power Judgment as 'per incuriam', has nowhere observed that the matter before them was not settled on issues of law and therefore, qualified for being a 'rare of the rarest case'.

228. Pertinently, the Full Bench of this Hon'ble Tribunal in its judgment dated 24.03.2015 in Appeal No. 103 of 2012 (Maruti Suzuki India Limited Vs. Haryana Electricity Regulatory Commission and Anr.) itself has observed if at all a coordinate bench is inclined to take a contrary view from a precedent, it ought to refer the matter to a larger bench. The relevant portion of the said judgment has been reproduced herein below:

“61..... The judgment of the two-Member Bench of the Tribunal dated 4/10/2012 in Appeal No.200 of 2011 is binding on a coordinate Bench of the Tribunal. It is however open to the Appellant to distinguish the said judgment on facts. It is open to the Appellant to point out to the co-ordinate Bench that the said judgment ought not to be followed because it does not take into consideration relevant legal provisions or relevant precedents and is therefore per incuriam or for any other sound reason. If the co-ordinate Bench is in agreement with this submission and feels that a different view is required to be taken, judicial propriety demands that the co-ordinate Bench refers the matter to a larger Bench by giving reasons.....”

229. In State of Bihar v. KalikaKuer, (2003) 5 SCC 448 Hon'ble Supreme Court of India observed as under:

“9. In Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. [(2001) 6 SCC 356] this Court observed: (SCC pp. 367 & 368, paras 19 & 23): A prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment ‘per incuriam’. It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam.

10. *Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the Impugned Order, while saying that the decision in the case of Ramkrit Singh [AIR 1979 Pat 250 : 1979 Pat LJR 161 (FB)] was rendered per incuriam. On the other hand, it was observed that in the case of Ramkrit Singh [AIR 1979 Pat 250 : 1979 Pat LJR 161 (FB)] the Court did not consider the question as to whether the Consolidation Authorities are courts of limited jurisdiction or not. In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a*

possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. Though hardly necessary, we may however, refer to a few decisions on the above proposition.”

The decision in TNPPA is ‘per incuriam’ and/or requires reconsideration

230. This Tribunal whilst passing the TNPPA Judgment has negated all the settled judicial principles and held the Kadodara Power Judgment as ‘per incuriam’. Without prejudice, if at all there was some distinguishing factor in light of which this Hon’ble Tribunal deemed fit not to follow the Kadodara Power Judgment, the dispute should have been referred to a larger bench for deciding upon the issue at hand. It is no more *res integra* that a decision cannot be declared per incuriam only because certain additional arguments or aspects were not considered in the earlier judgment. The doctrine of per incuriam is an exception to the Rule of *stare decisis*, which, as is well settled, must be applied sparingly. It is relevant to highlight that the TNPPA judgment declares the Kadodara Power judgment

per incuriam, firstly on the reasoning that the earlier judgment failed to consider certain judgments under taxation law which distinguishes 'association of persons' from a 'company' and secondly on the ground that the earlier judgment did not take note of a particular interpretation of the Rule 3 of the Electricity Rules which weighed with the court in the TNPPA judgment. It is humbly submitted that both the stated reasons could not have been taken as a ground to hold earlier judgment as per incuriam. The principle of per incuriam can only be applied if a decision has been rendered in 'ignorance of law' applicable to the issue at hand. What is contemplated is ignorance of some enactment, provision, rule directly applicable to the issue or some precedent of a coordinate or larger bench which covered the same issue. Non-consideration of a particular possible interpretation or some judgments rendered in context of other statutes cannot be taken as 'ignorance of law' as required for application of the principle.

231. The TNPPA Judgment is also bad in law for the following reasons:

- a. The judgments that have been passed by placing reliance on the Kadodara Power Judgment also no longer have precedential value.
- b. The primary reliance has been placed on judgments pertaining to taxation laws, which have no bearing on the electricity matter. The Act being a consolidating act governs all the aspects of the sector.

232. The TNPPA Judgment not only has disrupted the settled principles on which the captive sector was operating for the past decade or so, but also has given rise to a slew of issues which shall lead to disturbing ramifications inter-alia:

- a. Allowed 'gaming of the system' as there is an open scope for manipulation of shareholding pattern as per the consumption carried out throughout a given fiscal year. In other words, a user may consume power for only a few months and may evade the payment of CSS and other charges. Also, a user may hold only 1% of shareholding and may consume 50% of power out of a threshold of 51%.
- b. Without the application of mathematical computation tools like 'weighted average' shareholding, there is a clear violation of the intent of the legislation. For instance, a shareholder may only partake for 1 day out of 365 days in the captive structure and still qualify for exemption from the payment of CSS.
- c. The end consumers of the distribution licensee shall have to bear the brunt due to large consumers evading the payment of CSS.

233. In addition to above, the decision in the TNPPA Judgment ignores the consideration of the following relevant contentions which has led to an erroneous interpretation of the Rule 3 of the Electricity Rules:

- a. It failed to consider that the Rule 3(1)(b) deals with a special contingency of partial usage of power plant captively. The

TNPPA judgment proceeds on an incorrect understanding that Rule 3(1)(b) governs qualifications to be satisfied by a power plant set up by 'company' or 'SPV'.

- b. It failed to consider the Rule 3(1)(b) deals with SPV's alone and not existing companies or companies carrying out other business other than operation of a power plant.
- c. It failed to consider the Rule 3(1)(b) deals with SPV's alone and not existing companies or companies carrying out other business other than operation of a power plant.

Distinguishing the present case from TNPAA Judgment

234. The present matter at hand is premised on an entirely different set of facts as compared to the one involved in the TNPAA Judgment. Therein, the TANGEDCO issued multiple circulars requisitioning data from the captive generators and captive users in order to verify captive status as per the Rule 3 of the Electricity Rules. This was challenged by the captive generators and captive users before Madras High Court (Madurai Bench). The Madras High Court vide its Order dated 09.10.2018 directed the TNERC to formulate procedure for verifying the status of CGP. Pursuant to this, on 28.01.2020, the TNERC passed the Order in R.A. No. 7 of 2019 formulating the procedure to be followed for verification / determination of the captive status of the captive generators and captive users. This was challenged before this Hon'ble Tribunal vide Appeal No. 131 of 2020.

235. However, the present matter is stemming out of proper adjudication and verification of the CGP status of the SWPGL wherein Ld. Commission has delved into each of the issues raised by SWPGL as well as the consumers of SWPGL and only after due examination of the submissions of the parties, both factually and legally, and the documents placed on record, has passed the Impugned Order. The TNPPA judgment has no application on the present set of proceedings. The only commonality between the two disputes is the reliance on the Kadodara Power Judgment which has been erroneously declared as 'per incuriam'

236. Basis the abovementioned rationale, the Ld. Commission held that SWPGL does not fulfil the captive status criteria for FY 2016-17 and passed the Impugned Order.

237. The Appeal filed by the Appellant does not hold any merit for the following reasons:

A) Illogical reliance on NCLT's Order – The Appellant has relied on National Company Law Tribunal, Hyderabad Bench's order dated 17.10.2019 ("NCLT Order"). During the pendency of the SWPGL Petition, Corporate Insolvency Resolution Process was initiated against SWPGL under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). Vide NCLT Order, the Resolution Plan was approved and all past non-compliances of SWPGL were stated to be waived off by all governmental authorities. The Appellant has taken the argument that on account of approval of Resolution Plan, all PPAs between SWPGL and captive users stand terminated without any obligations/liabilities on SWPGL.

Further, the Appellant has submitted that it has already fulfilled its obligations as a captive consumer under the Act and Rule 3 of Electricity Rules, hence should not be held liable for any past non-compliance of SWPGL which has now been waived off.

The following rationales elucidate the absurdity on Appellant's part for relying on NCLT Order:

- (i) Firstly, the obligation to pay CSS is always on the captive user/consumer and not the generator. Thus, the NCLT Order is only applicable on SWPGL which is the generator in the present case.
- (ii) Secondly, though SWPGL's liability of any past non-compliance is waived off in light of the NCLT Order, it cannot be equated to a qualification criterion envisaged under Rule 3 of the Electricity Rules with any compliance envisaged under IBC.
- (iii) The Ld. Commission has noted that averments regarding waiver are factually incorrect as Section 31(1) of IBC is binding on government authority to whom statutory dues are owed whilst the distribution licensees are neither government authority nor arising due to statutory dues from SWPGL. Rather the claim of distribution licensees are regarding recovery of dues towards CSS from captive users and not from SWPGL who is a corporate debtor undergone the NCLT proceeding.

B) Selective demonstration of shareholding- SWPGL, during the adjudication of Case No. 175 of 2017 submitted in total 8

shareholding certificates to the Ld. Commission. SWPGL has cherry picked 15 out of the 27 shareholders as demonstrated in the CA Certificates submitted at the time of seeking grant of Open Access ("OA") to demonstrate compliance to Rule 3 of Electricity Rules and very conveniently chosen to omit even those shareholders who have not only sought OA but also have consumed power from the Power Plant in FY 2016-17 i.e. RL Steel and India Steel, since their consumption requirement is not in accordance with their equity shareholding. On this ground alone, SWPGL and shareholders / users fail to meet the criteria specified under Rule 3 of the Electricity Rules and the Hon'ble Tribunal's Kadodara Power Judgment. During FY 2016-17, while seeking OA, SWPGL, by way of the CA Certificates, portrayed a total of 27 shareholders / users of SWPGL who shall consume power, based on which permission under Section 9 of the Electricity Act was granted. However, in order to demonstrate compliance of ROP, only 15 of the aforesaid 27 shareholders / users have been selected for the purpose of demonstrating compliance of Rule 3 of the Electricity Rules. This manner of selective depiction of shareholding pattern and choosing of shareholders to demonstrate compliance is against the intent of the statutory framework.

- C) Consumers of SWPGL do not meet the ROP- SWPGL has done a selective consideration of the shareholders in order to demonstrate compliance with Rule 3 of Electricity Rules which is impermissible. However, in all its bonafide, to analyze the qualification of the Power Plant as a CGP, Ld. Commission has

tested the compliance with the twin requirements prescribed under Rule 3 of Electricity Rules under two scenarios i.e. Scenario 1 with 15 captive consumers and Scenario 2 with 17 captive consumers. Scenario 1 was presented as the captive structure by the SPWGL for seeking qualification as a CGP whereas, Scenario 2 was also analyzed by the Ld. Commission as the two consumers sought open access as well as consumed certain quantum of electricity during FY 2016-17. However, in both these scenarios, the Power Plant failed to meet the qualification criteria stipulated under the statutory framework. The analysis of the two scenarios have been discussed hereunder:

- (i) Under Scenario 1, the Ld. Commission has calculated the qualification benchmark qua 15 consumers as submitted by SWPGL in its Petition. The Ld. Commission observed that at the start of the FY 2016-17, their aggregate equity shareholding was less than 13%, which is the minimum equity shareholding requirement under Electricity Rules for qualifying as CGP. It is only in the later part of FY 2016-17 that their shareholding percentage was increased to 14.19%.
- (ii) Under scenario 2, the Ld. Commission calculated the qualification benchmark qua 17 consumers as the two remaining consumers i.e. RL Steel and India Steel ought to have been included in the computation of the CGP status as not only they were part of the consumers who sought OA, but also consumed electricity generated from the Power Plant for some time during FY 2016-17. The

Ld. Commission observed that the 17 consumers met the requirement of minimum shareholding i.e. more than 13% for FY2016-17. However, the two consumers i.e. RL Steel and India Steel did not meet the Rule of Proportionality, which is one of the cardinal requirements to be met for qualifying as a CGP.

D) Metering Discrepancies –

- i. Under the CEA (Installation and Operation of Meters) Regulations, 2006 (“CEA Metering Regulations”) the obligation is upon the generating company to maintain database and metering records.
- ii. SWPGL has admitted in the proceedings of Case No. 62 of 2017 that separate Monthly Energy Injection (“MEI”) data for Unit 3 and 4 is unavailable. It is submitted that SEM meters installed at MSETCL Warora Sub-station on the 220 kV Warora-WPCL Lines 1 & 2 and there are no units wise SEM meters installed. In the absence of unit-wise certified SEM metering data for FY 2016-17, the generation from captive and non-captive units cannot be segregated. Therefore, the quantum of power generated and supplied from the CPP Units 3 & 4 is per se not available. There is a high possibility that all or most of the power generated from Unit 1 and 2 (i.e., noncaptive units) might have been wheeled to Open Access consumers. (Refer paragraph 20.2 and 20.5, Page 27 (TPC-D’s Submission) and 20.52, Page 37 of

Impugned Order dated 22.10.2020 passed by Ld. Commission in Case No. 175 of 2017.) The relevant portion of the Impugned Order is reproduced below –

“20.62 As regards the issue of non-availability of 15 minutes MRI data, the Commission notes the submission of MSEDCL and TPC-D that SEM meters installed at MSETCL Warora Sub-station on the 220 kV Warora-WPCL Lines 1 & 2 and there is no unit wise SEM meters installed. The Commission further notes the submission of MSLDC wherein it has admitted that MSLDC does not have the MRI data separately for the CPP Units 3 & 4 as identified by SWPGL.”

Thus, the details necessary for ascertaining captive status of SWPGL for FY 2016-17 are not available and it would be contrary to the extant regulatory and statutory framework for Ld. Commission to verify the captive status of SWPGL in the absence of such information. (Refer paragraph 20.48, Page 35 of Impugned Order dated 22.10.2020 passed by Ld. Commission in Case No. 175 of 2017).

- iii. Whether the criteria specified under Rule 3 of the Electricity Rules have been fulfilled by SWPGL cannot be determined in the absence of 15- minute data for all four generating units. An adverse inference must be drawn by this Hon'ble Tribunal due to SWPGL's conduct of continuously failing to produce data as directed to be produced by the Ld. Commission.

Further, in order to help establish SWPGL's CGP status, SWPGL was duty bound to obtain its certification/validation from STU/MSETCL/SLDC that such metering arrangement of its CGP meets the relevant requirements laid down under the CEA Metering Regulations /Applicable Metering Code of State Grid Code Regulations. It has chosen not to comply with these CEA and Metering Code requirements. (Refer paragraph 20.18 and 20.58, Page 29 and 40 of Impugned Order dated 22.10.2020 passed by Ld. Commission in Case No. 175 of 2017)

- iv. Metering arrangements of each of SWPGL generating units do not conform with the guidelines laid down in the CEA Regulations and the Ld. Commission's Order dated 17.11.2018 in Case No. 23 of 2017. (Refer paragraph 20.20, Page 29 of Impugned Order dated 22.10.2020 passed by Ld. Commission in Case No. 175 of 2017)
- v. In terms of Regulation 14(3) of the CEA Metering Regulations read with the Clause 13.2 of the Maharashtra Metering Code for Intra-State Transmission System formulated by the State Transmission Utility, it is, inter alia, the responsibility of the concerned generating company to record the metered data, maintain database of all the information associated with the energy accounting and audit meters and verify the correctness of metered data.

Furthermore, it is necessary to prepare quarterly, half-yearly and yearly energy account for its system for taking appropriate action for efficient operation and system development. As such, SWPGL cannot be permitted to cover-up its misdoings on account of any mistake, if at all, by MSLDC, and thereby take benefit of its own wrong. Since the metering arrangement on each of SWPGL's generating Units were not in accordance with the applicable Regulations including the CEA Metering Regulations, the same cannot be relied upon for ascertaining the quantum of power generated/ supplied by SWPGL from the said Units. With regard to the same, the Ld. Commission has stated the following in the Impugned Order dated 22.10.2020 in Case No. 175 of 2017:

“20.58 The above provisions of CEA Regulations clearly states that it is the responsibility of the generator i.e. SWPGL in the present context to record its metered data for captive units and maintain database of all the information associated with the energy accounting and audit meters and verify the correctness of metered data. Hence, the requirements under these provisions cannot be relaxed for SWPGL as a Generating Company and non-compliance with these requirements cannot be condoned. Therefore, in order to help establish SWPGL's CGP status, SWPGL was duty bound to obtain its certification/validation from STU/MSETCL/SLDC that such metering arrangement

of its CGP meets the relevant requirements laid down under the CEA Regulations/Applicable Metering Code of State Grid Code Regulations. It has chosen not to comply with these CEA and Metering Code requirements.”

“20.60 The Commission notes that the deficiencies that were observed during CPP status determination in the past have continued in FY 2016-17 as well.

20.61 The Commission further notes SWPGL’s contention that since IPP Units were under shutdown since February 2016, entire generation has been supplied from Captive Units 3 and 4 and hence issue of availability of certified separate gross generation metered data on 15-minute basis for captive units becomes irrelevant. In this context, the Commission is of the view that even though the IPP units were under shutdown, it was necessary to record the gross generation of captive units with appropriate metering arrangement (sealed, tested, and authenticated reading) as the determination of captive status of 51% generated units are based on gross generation of captive units and hence SWPGL was obligated to maintain the proper metering record of captive units. Shutdown of the IPP units does not absolve SWPGL of the responsibility to ensure proper metering system as per the requirements specified in applicable rules and Regulations.

.... “20.65 Further, the Commission also notes that in order to check whether the generation identified by SWPGL is from CPP Unit 3 and 4 and not from other units IPP Units 1 and 2, there is a requirement for the unit wise SEM data for 15 minutes time interval.

20.66 Thus, the Commission is of the view that unit wise SEM metering on 15 minutes time block is the necessary and basic requirement for the OA and if the Captive Generator needs to enjoy the benefits of exemption from CSS, then these requirements as provided under the Regulations need to be complied with by the SWPGL.”

- vi. The issue of lack of appropriate meters and the lack of metering data has already been dealt with in order dated 15.02.2019 passed by the Ld. Commission in Case No. 116 of 2018. Therein the Ld. Commission had rightfully denied open access to SWPGL and directed that CSS be paid to the Distribution Licensee. (Refer paragraph 20.21, Page 30 of Impugned Order dated 22.10.2020 passed by Ld. Commission in Case No. 175 of 2017)
- vii. Joint Meter Reading: It is submitted that as SWPGL is connected to the transmission network, the joint meter reading has to be taken by the generator and the STU as mentioned by the Ld. Commission in its Order in Case No. 23 of 2017. (Refer paragraph 20.55, Page 39 of Impugned

Order dated 22.10.2020 passed by Ld. Commission in Case No. 175 of 2017).

viii. With regard to discontinuation of joint meter reading in 2014, it is submitted as follows:

a. SWPGL has failed to make any statement whatsoever on whether during the period 2014-2017 it had in terms of the CEA Metering Regulations downloaded the meter data and maintained a database of the same for energy accounting purposes. There is nothing brought on record by SWPGL that it had asked for joint meter reading which was not responded by the respondent.

b. Distribution Licensee's/ MSLDC's failure to carry out joint meter reading, if any, itself does not exempt SWPGL from discharging its obligations under the CEA Regulations. The Hon'ble Supreme Court in Commissioner of Income Tax, Bihar and Orissa v. Shri Ramakrishna Deo reported as AIR 1959 SC 239, has categorically held that, "the law is well settled that it is for a person who claims exemption to establish it...". Meaning thereby that, SWPGL was required to establish, without any doubt, that it complies with the requirement of Rule 3 of the Electricity Rules and is therefore entitled to exemption from levy of statutory charges (CSS). Under such circumstances, the compliance with Rule 3 of the Electricity Rules and the CPP status of SWPGL cannot be established. (Refer paragraph 20.24, Page 30 of Impugned Order dated

22.10.2020 passed by Ld. Commission in Case No. 175 of 2017)

- ix. TNNPA Applicability - Without prejudice, the fact that SWPGL has not provided any data regarding such supply makes the determination of CPP Status of SWPGL in respect of Units 3 & 4 for the FY 2016-17 impossible even if the TNPPA judgment is made applicable. In fact, the TNPPA judgment has nowhere stated that criteria of 51% consumption by captive consumers may be scrutinized without even looking at the quantum of electricity supplied from the Units identified for captive supply by the generator.

238. The Commission in its Impugned Order has provided detailed reasoning for rejection of Appellant's submissions while delving into the factual matrix of the case and the extant regulatory framework. The Ld. Commission in its Impugned Order has rightfully rejected the contentions of the Appellant as well as SWPGL and held that the Power Plant of SWPGL does not qualify as a CGP and therefore, the shareholders of SWPGL consuming electricity generated from the Power Plant are liable to pay CSS and other applicable charges to the distribution licensee. In light of the same, the present Appeal is liable to be dismissed for being meritless.

Submissions of learned senior counsel Mr. Sanjay Sen in Appeal No. 150 of 2018

239. The present Appeal has been preferred by the Appellant/ Lupin Limited ("Appellant") under Section 111 of the Electricity Act, 2003 ("Act") challenging the limited findings contained in Paragraph 19.14 of the order dated 19.03.2018 ("Impugned Order") passed by the Maharashtra Electricity Regulatory Commission ("MERC/Ld. State Commission") in Case No. 159 of 2016. The relevant extracts of the Impugned Order are reproduced hereunder:

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

240. The present Appeal is limited to the aforesaid findings contained in the Impugned Order in the context of Captive Generating Plant ("CGP") verification for FY 2015-16 of Sai Wardha Power Generation Limited ("SWPGL"). The Appellant is a fully integrated transnational pharmaceutical company with significant presence in United States of America, India, Japan and many other countries globally. The Appellant during the ongoing pandemic (i.e., Covid-19) has also maximised the production of life-saving drugs, including the production of hydroxychloroquine sulphate and Azithromycin – two drugs being explored as potential treatment for Covid-19. Further, the Appellant offers high-quality yet affordable medicine for some of the most chronic diseases addressing the unmet needs in

many parts of the world. The Appellant is thus engaged in activities of pharmaceutical manufacturing and research which are considered essential services. The Appellant is one of the group captive consumers of SWPGL which has its CGPsviz., Unit 3 and Unit 4 located at Chandrapur, Maharashtra. The Appellant during the FY 2015-16 held 30,07,237 Class A equity shares (0.74%) and during the FY 2015-16 had consumed 65.08 MUs from the CGP units of SWPGL as opposed to the required consumption of 26.04 MUs in terms of Rule 3 of the Electricity Rules.

241. At the outset, it may be noted that all manufacturing facilities of the Appellant have been constantly operating throughout the national lockdown during the ongoing pandemic. Over the recent years the Government has placed enormous importance on ease of doing business due to which business and consumer friendly schemes encouraging captive generation and production of power at subsidized rates have been put in place to benefit/encourage consumers like the Appellant, which is a pharmaceutical company. However, due to the high-handed attitude of the Distribution Companies in the State of Maharashtra which has been upheld by the Ld. State Commission, the purpose of promoting captive generation seems to be failing. This has completely defeated the legislative intent behind encouraging captive power regime under the Act.

242. The Appellant craves liberty of this Hon'ble Tribunal to adopt and rely upon the submissions/arguments already made by SWPGL as well as other Captive User(s) including Mahindra Sanyo Special

Steel Private Limited in the connected Appeals. The said submissions are not repeated herein for the sake of brevity.

243. In addition to the aforesaid submissions, the Appellant seeks to make the following submissions in 2 (two) parts. Part I of the present Note deals with the issue of treatment of Unscheduled Interchange (“**UI**”) while Part II of the Note deals with the contentions made by the Respondent(s) regarding metering and allegations of fraud.

PART-I

244. In terms of the findings of the Ld. State Commission in the Impugned Order, it is clear that the Ld. State Commission has treated the power injected from the Independent Power Producer Units 1 & 2 (“**IPP**”) as “unscheduled” power which is required to be treated in accordance with the applicable provisions of the Act and the relevant Rules and Regulations.

245. In pursuance of the Impugned Order, Respondent No.2, Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”) has raised a supplementary bill dated 11.04.2018 (“**Supplementary Bill**”) of Rs.3,66,25,000/- (Rupees Three Crore Sixty Six Lakh Twenty Five Thousand only) on the Appellant. The said Supplementary Bill is devoid of any detailed break-up of the bill amount and the basis of computation. In this regard, the Appellant had also issued letters dated 24.04.2018, 25.04.2018, 03.05.2018 and 16.05.2018, seeking more details. However, the Appellant has not received any response till date.

246. It appears that the Supplementary Bill has been raised at temporary tariff by treating the power injected by SWPGL from the IPP Units as over-injection on the part of SWPGL. However, MSEDCL has till date not confirmed the basis of such computation.

247. On the basis of bills raised by MSEDCL and in the absence of data provided by MSEDCL, Lupin has made its calculation on the basis of its consumption in FY 2015-16 to show that it has not exceeded its contract demand. Therefore, the Appellant has argued that the Appellant is not liable to pay any temporary tariff. It has further been argued that there has only been one instance of over-drawl.

Treatment of Unscheduled Interchange (UI) in Maharashtra

248. At the outset, it may be noted that the treatment of power injected by the IPP of SWPGL in the Impugned Order is contrary to previously accepted methodology of the Ld. State Commission itself. The Ld. State Commission in its Order dated 20.08.2014 in Case No.101 of 2014, while determining the Captive Generating Plant ("CGP") status of SWPGL for FY 2013-14 had dealt with the same issue in the following manner:

"23. Based on the reply received from WPCL that 10.06 MU has been supplied to the Captive Users from other sources during outages (forced and planned outages) of Unit-3 & 4. Further, upon enquiring to submit, consumer-wise details of energy supplied from sources during the outages of Unit-3 & Unit-4, WPCL submitted that supplies made from other sources during outages of Unit-3 & Unit-4 cannot be specifically

identified to any captive consumer. Accordingly, in absence of consumer-wise details of supply made to the Captive Users during the outages of Unit-3 & Unit-4, the Commission has allocated 10.06 MU (11.30 MU after grossing up for auxiliary consumptions) among Captive Users on pro-rata basis of their consumption during the year.”

249. Without prejudice to the aforesaid, it is submitted that even in terms of the applicable regulatory framework there is no provision for power injected by other sources than the Captive Power Plant Units 3 & 4 (“CPP units”) units of SWPGL to be deemed to have been supplied by the Distribution Companies (“Discoms”).
250. It may further be noted that MSEDCL, Tata Power Company (“TPC”) and the Ld. State Commission, have all referred to altogether separate provisions under the MERC (Distribution of Open Access) Regulations, 2014 (“DOA Regulations 2014”) to justify the levy of charges on the Appellant for the power injected by the IPP Units of SWPGL in pursuance of the Impugned Order. The aforesaid inconsistency is further exacerbated by the fact that the Ld. State Commission has not referred to any provisions/orders in the Impugned Order while treating the power injected by SWPGL from its IPP as “unscheduled” and deemed to have been supplied by MSEDCL. A summary of the submissions made by the aforesaid Respondents before this Hon’ble Tribunal in this regard is provided hereunder:

MSEDCL Submissions	TPC Submissions	Ld. State Commission's Submissions
<p>MSEDCL has relied upon Regulation 19 of the DOA Regulations 2014 to state that in the event the generator trips after commencement of open access, then the supply from the Distribution Licensee has to be made available as "standby supply". It has been stated that hence perusal of Regulation 2.1 (b) and Regulation 19 of the DOA Regulations 2014 makes it clear that if any injection of energy is made without an open access permission, then such energy cannot be accounted in the system. Hence, such energy has to be necessarily treated as if the same has been drawn from the</p>	<p>In case a generator injects power into the grid without an agreement for sale of power, then the charges for such power shall be reduced to zero and the power shall be credited to the Distribution Licensees to whom the generator is connected</p> <p><i>*Reference may be to Clause 5.11 of the MERC DOA Regulations 2014</i></p>	<p>The Ld. State Commission has treated the over-injection as unscheduled supply in view of ABT order dt. 17.5.2007 (case No.42 of 2006).</p>

MSEDCL Submissions	TPC Submissions	Ld. State Commission's Submissions
distribution licensee. (to		

251. As is clear from the aforesaid summary, none of the Respondents have been able to refer to any specific provisions to justify the recovery of the tariff claimed by MSEDCL from Lupin. In such an instance the tariff of Rs.12.5/unit sought to be recovered by MSEDCL through its Supplementary Bill dated 11.04.2018 cannot be allowed.

252. Although, TPC has not relied on any specific provision of DOA Regulations 2014, it appears that it has relied upon the language of Clause 5.11 of the DOA Regulations 2014 which reads as under:

“5.11. A generating station, including a captive generating plant which has been granted connectivity to the distribution system shall be allowed to undertake testing including full load test by injecting its infirm power into the grid before being put into commercial operation, even before availing any type of Open Access, after obtaining permission of the State Load Despatch Centre and the Distribution Licensee, who shall keep grid security in view while granting such permission :

...

Provided that before injecting infirm power, the generating station including captive generating plant, shall have an agreement with a Distribution Licensee to supply infirm power :

Provided further that in case the generator does not have an agreement for sale of power with any Licensee then the charges for such infirm power injected into the grid shall be reduced to zero and this infirm power shall be credited to the Distribution Licensee to whom the generator is connected.”

[Emphasis Supplied]

253. As is evident, the aforesaid provision is only relevant with respect to treatment of infirm/start-up power and has no relation to the treatment of power injected by the IPPs of SWPGL. It may be noted that even in the Impugned Order, the term used by the Ld. State Commission in the Impugned Order is “unscheduled power” and not infirm power.
254. On the other hand, the reliance placed by MSEDCL on Regulation 19 of the DOA Regulations 2014 is also misplaced. Regulation 19 of the DOA Regulations 2014 separately provides for payment of standby charges for drawal of power by Open Access Consumer from Distribution Licensee *inter-alia* in cases of outages of generators. For such supply, the Open Access consumer shall “*be liable to pay energy charges either at UI charge or the System Marginal Price identified under the Intra-state ABT mechanism or the Energy charge or Variable Charge of temporary tariff category, whichever is applicable of the Distribution Licensee on which consumer is connected as provided in the Tariff schedule approved by the Commission, whichever is higher.*” However, in the present case neither Lupin has raised any day ahead request for drawal of such non-firm power nor has there been any actual supply by MSEDCL since the supply of power was from other units of the same generating company, i.e. SWPGL. This standby

charge and the temporary tariff payable under the applicable tariff orders for a specific period is only payable for any standby power actually procured from the Discom by an open access consumer pursuant to raising a day ahead request.

255. It is submitted that the Ld. State Commission has also erred in treating the power generated by IPP units of SWPGL as “Unscheduled Interchange”. For any injection of power by SWPGL to be treated as UI, the power injection has to deviate from the schedule provided by SWPGL to MSLDC. As has been submitted by SWPGL, the schedule provided by it to MSLDC was for the entire generating Project, i.e. all 4 (four) units and not unit-wise. It may be noted that there is no requirement for SWPGL to provide unit-wise schedule. In this regard, reliance is also placed on Clause 6.5(3) of the Indian Electricity Grid Code, 2010, in terms of which the Inter-State Generating Station shall advise the concerned RLDC, the station wise ex-power plant MW and MWh capabilities foreseen for the next day. This requirement of schedule declaration is also not unit-wise.

256. The Ld. State Commission in its Note dated 27.09.2021 served upon the Appellant on 25.09.2021, has relied upon the ABT Order dated 17.05.2007 in Case No.42 of 2006 to submit that SWPGL as a non-renewable generating station was required to provide unit-wise scheduling. It is submitted that even the aforesaid order at paragraph 2.2.10 refers to Regulation 40.1 of the MERC (Terms and Conditions of Tariff) Regulations, 2005 in terms of which the scheduling is required to be done by the generating station for the entire station and not unit-wise. The aforesaid Regulations as well

as the scheduling procedure in Maharashtra provides for only station-wise scheduling and not unit-wise scheduling. It is further submitted that even if the aforesaid Order provides for unit-wise scheduling by a generating station in contravention of the applicable Regulations, the same cannot be made applicable in terms of established judicial principles.

257. It is established that the schedule required to be provided is not unit-wise also from the Open Access permission format granted to SWPGL, wherein the injecting entity is only recognised as “SWPL, Warora” without any mention of the units of SWPGL.

258. Although the aforesaid Respondents have failed to provide any consistent/correct methodology for treatment of unscheduled power, it may be noted that Regulation 21.2 of the DOA Regulations 2014 deals with unscheduled interchange of electricity in the following manner:

“21.2 Every person who has been granted Open Access in accordance with these Regulations shall comply with the provisions of the Balancing and Settlement Code, to the extent made applicable to them:

Provided that every such person may be required to pay such charges as may be provided in the Balancing and Settlement Code including charges for unscheduled use of the transmission system and unscheduled interchange of electricity.”

259. Regulation 26 of the DOA Regulations 2014 further deals with the deviations between scheduling and actual injection and/or drawal in the following manner:

“26.2 Settlement of Energy at Drawal Point in respect of Open Access Consumer: Deviations between the schedule and the actual injection and/or drawal in respect of Open Access consumer shall be settled as under:

26.2.1 Over drawal:

The over drawal by an Open Access consumer shall be settled at higher of the below two options:

(i) The System Marginal Price (SMP) plus other Incidental charges (Net UI charges,

additional UI) or any other intra-State ABT settlement charges as identified under the intra-State ABT mechanism operating in the State from time to time or,

(ii) The Energy charge or Variable Charge of temporary tariff category, whichever is applicable, as identified in the Tariff schedule as determined by the Commission from time to time for the concerned Distribution Licensee.

260. Pertinently, the DOA Regulations 2014 provide for the settlement of imbalance charges separately for open access consumer(s) and generating company has been dealt with separately in Regulation 26.2 and 26.5 of the said Regulations. For generating companies, in case of over injection, Regulation 26.5.1 is relevant:

“26.5.1 Over injection

a) If any over injection than that scheduled by the generator/trader leads to benefit of the grid then such over injection will be settled either at UI charge applicable under the Inter-state ABT mechanism or the SMP plus other Incidental charges (Net UI charges, additional UI) or any other intra-State ABT settlement charges as identified under the intra-State ABT mechanism operating in the State from time to time or at the weighted average cost of Long-term power purchase sources excluding Renewable sources and Liquid fuel based generation of the Distribution Licensee, whichever is lower.

b) If any over injection than that scheduled by the generator/trader is detrimental to the grid, then for such over injection the OA generator/trader shall pay to the state pool either at UI charge applicable under the Inter-state ABT mechanism or the SMP plus other Incidental charges (Net UI charges, additional UI) or any other intra-State ABT settlement charges as identified under the intra-State ABT mechanism operating in the State from time to time, whichever is higher:

Provided that the Distribution Licensee being the Nodal agency, shall levy and collect such charge from the Open Access generator/trader/Member of Power Exchange and pay into the state pool account as identified under the intra-State ABT mechanism.”

261. The provisions of the Regulation 26 of the DOA Regulations 2014 are however, not applicable for Open Access generators and consumers who are participants of State Pool and for them the provisions of energy balancing and settlement as specified in Final Balancing and Settlement Mechanism (“FBSM”).

262. Under the FBSM mechanism any over-generation by generators and under-drawal by states is considered as contributions to the Unscheduled Interchanges (UI) energy pool while under-generation by generators and over-drawal by states is considered as drawal from the UI energy pool. The rate of such sale or purchase of UI energy is a pre-determined function of the grid frequency during a defined 15-minute time block. In terms of the definition provided in the FBSM, "State Pool Participants" mean the market participants of Maharashtra Electricity Market who meet the conditions for membership of Pool, subject to fulfilment of qualification criteria or covenants for Pool participation as set out by the Ld. State Commission. Further, Clause 4.1.1.2 refers to the State Pool Participants to envisage Merchant Generators selling power outside the State to be the participants. The procedure for settlement of imbalance pool under Clause 8.1 of the FBSM Code is a separate procedure under which Maharashtra State Load Despatch Centre ("MSLDC") may raise supplementary bills to State Pool Participants and the said mechanism does not provide for any deemed supply by the Discom in case of unscheduled injection by the IPP.

263. As is clear from a perusal of the objections raised by TPC, MSEDCL and the Ld. State Commission, the Discoms have failed to provide any cogent basis for treatment of power supplied by the IPP units of SWPGL to its consumers as deemed power supply from the Discoms. TPC in its Reply to I.A. No.674 of 2018 has erroneously equated UI with infirm power to justify the unjust enrichment by the Discoms whereby they have benefitted from the

power injected by SWPGL into the grid on the one hand and sought to recover an exorbitant amount from the Captive Users such as Lupin by raising bills on temporary tariff on the other hand.

264. In view of the aforesaid submissions, it is clear that the Respondent Discom(s) have merely referred to irrelevant provisions of the MERC DOA Regulations as an afterthought to justify their unjust enrichment without explaining as to how the power allegedly injected from the IPP units of SWPGL can be treated as UI or infirm power or power deemed to be supplied by the Discom. In fact, the Ld. State Commission in the Impugned Order has merely relied upon the data submitted by MSLDC and SWPGL to assume that 56.65 MUs which had not been generated by the CPP units of SWPGL must have been generated by the IPP units. Such an assumption is merely based on conjectures and liable to be reconsidered.

265. It is submitted that in terms of Section 10 of the Act, there is no bar on supply of power by a generating company directly from its generating unit subject to payment of open access charges. Therefore, the only consequence of consumption of power by Lupin from the IPP units of SWPGL was that it was liable to make payment towards open access charges. In such an event, the Ld. State Commission cannot constrain Lupin to procure power either through a deemed fiction or otherwise from the Discom. Such an order passed by the Ld. State Commission is antithetical to the aims and objectives of the Act.

Treatment of UI by CERC

266. The aforesaid treatment of UI under the DOA Regulations 2014 and FBSM Code is similar to the provisions contained in the Central Electricity Regulatory Commission (Unscheduled Interchange charges and related matters) Regulations, 2009 ("CERC UI Regulations"). In terms of Section 2(1)(o), UI is defined as under:

'Unscheduled Interchange' in a time-block for a generating station or a seller means its total actual generation minus its total scheduled generation and for a beneficiary or buyer means its total actual drawal minus its total scheduled drawal.'

267. In terms of Regulation 5 of the CERC UI Regulations the UI rate is capped based on the nature of fuel and the deviation in generation frequency. In terms of Regulation 7 of the CERC UI Regulations, any over-drawal and under-injection of electricity shall be computed in accordance with the methodology used for preparation of 'Regional Energy Accounts'.

268. At this point it is reiterated that the DOA Regulations 2014 specifically provide the treatment of over injection by a generating company over and above the schedule and the same cannot by any stretch of imagination be treated to also hold the open access consumers such as Lupin liable for payment of tariff to MSEDCL. The aforesaid treatment of UI is also similar to CERC UI Regulations.

269. In view of the aforesaid analysis, it is clear that neither MSEDCL nor TPC have been able to provide any legitimate basis for claiming tariff for supply of power by SWPGL's IPP units to Lupin on the basis of the Impugned Order. In terms of the applicable regulatory framework, Section 10 of the Act and the Order dated 20.08.2014 in Case No.101 of 2014, the liability of Lupin to pay charges, if any, is limited to payment of cross-subsidy surcharge and other open access charges.

PART-II

270. The Respondents, including the Ld. State Commission, MSEDCL and TPC during the hearing in the present Appeal as well as through their Note/Synopses have alleged the following:

- (i) Appropriate Unit-wise generating meters are not available on each of the 4 (four) Units of SWPGL;
- (ii) It was the obligation of SWPGL to record and maintain the Availability Based Tariff ("ABT") meter data with all requisite information, which it has admittedly failed to;
- (iii) Installation of unit wise Special Energy Meters ("SEM") and the data of generation and supply unit wise is relevant for the purpose of determination of captive status; and
- (iv) SWPGL has fraudulently treated power injection from its IPP as power supplied from its CPP Units.

I. Installation of SEM is relevant only for grant of Open Access

271. At the outset, it may be noted that the Appellant, Lupin Limited ("Lupin") was granted Open Access ("OA") in terms of the

applicable regulations (detailed hereinbelow) as well as the terms and conditions for grant of Short-term Open Access (“STOA”) framed by MSEDCL. Since the grant of OA was subject to installation of SEMs in the first place, MSEDCL/TPC cannot now seek to blame the OA consumers such as Lupin for non-installation of meters.

272. In the event the SEMs were indeed not installed by SWPGL, MSEDCL could have at any moment refused to grant OA to Lupin or revoke/cancel the OA permissions granted to it, as had been done in previous years for the consumers of SWPGL¹ as well as other consumers². MSEDCL by neither refusing the grant of OA nor cancelling the OA permissions, has admitted to the installation of SEMs in accordance with the applicable Regulations by SWPGL. Since SWPGL has already submitted the commissioning certificates/details of SEM and ABT meters, the OA Applications were allowed by MSEDCL for previous periods, including FY 2014-15 in Case No.101 of 2014. Therefore, there can be no dispute at this point that the proper SEMs have not been installed by SWPGL.

273. In fact, the Ld. State Commission vide the Impugned Order has imposed the liability of cross-subsidy surcharge on Lupin *inter-alia* on the basis of the alleged failure of SWPGL in taking meter recordings/downloading the SEM data, without even issuing any

¹Paras 16(q)(f) & (g) and 24 of the Order dated 20.08.2014 in Case No.101 of 2014.

²Order dated 30.03.2016 in Case No.23 of 2015; and Order dated 03.01.2013 in Case Nos. 8, 18, 20 and 33 of 2012.

notice to Lupin. The Impugned Order is therefore, in teeth with the established principles of natural justice.³

274. Without prejudice to the aforesaid and in view of the aforesaid objections raised by the Respondent(s), the Appellant seeks to make the following submissions:

II. Installation of SEM and ABT meters

275. The fact of installation of the SEM/ABT meters is duly settled in terms of the following, including the submissions made by SWPGL before the Ld. State Commission in Case No.159 of 2016, which culminated into the passing of the Impugned Order:

- (i) In terms of Regulation 9 of the DOA Regulations 2014, the OA Applications shall be accompanied by certification from Testing Department for installation of SEM & CT/PT with required specification;
- (ii) The unit-wise SEM/ABT meters were installed by SWPGL/its consumers back in 2013 itself because MSEDCL since 01.04.2013 has not been allowing commencement of open access to those consumers of SWPGL who had not installed SEMs. The aforesaid position is also clear from the orders passed by the Ld. State Commission wherein SWPGL has time and again submitted that the SEM/ABT meters have been installed and the same has been acknowledged;⁴

³Mohan Wahi vs. Commissioned, Income Tax, Varanasi &Ors., (2001) 4 SCC 362.

⁴ Paras 8.2 and 8.3, 9.7 and 11.1 of the Order dated 23.02.2018 in Case No.62 of 2017; Paras 16(q)(f) & (g), 24 of the Order dated 20.08.2014 in Case No.101 of 2014; Paras 12.1, 12.5, 13.1 and 15.2 of the Impugned Order; Para 20.34 of the Order dated 22.10.2020 in Case No.175 of 2017

- (iii) The terms and conditions of grant of STOA mandate that Lupin/MSEDCL is required to install SEM and MSEDCL is required to jointly take energy meter readings every month;
- (iv) Till April, 2014, the Unit-wise generation data was being downloaded and taken by MSLDC for each of the Generating Units. This practice was discontinued only from June, 2014⁵; and
- (v) TPC itself has calculated the power injected into the grid from the IPP of SWPGL and even by TPC's computation in Case No.133 of 2018, the said injection is not more than 118 MUs. Such computation was based on the data filed by SWPGL on 24.07.2017 in Case No.159 of 2016.

III. Responsibility for downloading unit-wise generation data

276. The 15 minutes time block wise injection data from Unit No. 3 and 4 of the Generating Station of SWPGL for the period from 29.07.2017 to 01.09.2017 was submitted along with the Petition in Case No.62 of 2017 by SWPGL⁶. However, the data from April, 2014 is not available with MSLDC and hence could not be submitted by SWPGL along with the present Petition (Case No.159 of 2016).

277. The responsibility of MSEDCL to come forward for taking joint reading is established in terms of the following:

- (i) Para 19(b) Order dated 17.01.2018 in Case No.23 of 2017⁷;
- (ii) Regulation 23.4 and 23.5 of the DOA Regulations 2014;

⁵Para 15.2 of the Impugned Order.

⁶Para 15.2 of the Impugned Order.

⁷Quoted at Pg. 3 of the Note filed by MERC on 15.09.2021

- (iii) Regulation 17.5 of the DOA Regulations, 2016; and
- (iv) Paras 20.54 and 20.55 of the Order dated 22.10.2020 in Case No.175 of 2017.

IV. Plea of fraud by TPC/MSEDCL is inadmissible

278. TPC and MSEDCL had at no point in Case No.159 of 2016 or in Case No.133 of 2018 (Review Petition against the Impugned Order filed by TPC), raised the plea of fraud against SWPGL. However, TPC has raised the issue of fraud for the first time in the present proceedings before an appellate forum without support of any pleadings.

279. In this regard, it is submitted that it is established principle of law that the ground of fraud cannot be pleaded at the appellate stage for the first time. Further, any allegation of fraud (which requires a high burden of proof to be discharged), in the absence of pleadings is unacceptable and inadmissible. Reliance in this regard is placed at:

- (i) Judgment dated 02.11.2020 in Appeal No.10 of 2020: Power Company of Karnataka Limited &Anr. vs. Udupi Power Corporation Ltd. &Ors. (Paras 138-144)

“140. ...It was not pleaded or argued at any stage, despite full opportunity, that the correspondence had been fraudulently manufactured or ante-dated or never sent or received. In fact, the ESCOMs to whom such letters were addressed did not seek to raise any dispute or objection in such regard even while approaching this tribunal by appeals at hand, PCKL making a vague plea as to some discrepancies, not the least a plea of attempt to defraud,

such argument being raised on 30.06.2020 in the midst of hearing.

...

142. Even otherwise, bald or mere assertions as to the veracity of the letters or of fraud based on surmises and conjectures is not sufficient. The onus to prove has not been discharged particularly in face of implied admission of such material on account of default at the stage of pleadings. Such argument, as indeed such evidence if tendered, is unacceptable and inadmissible in absence of pleadings...

...

144. Dispute qua genuineness of documents is a question of fact and could and ought to have been raised before the forum of first instance (i.e. CERC). Raising these issues at such belated stage, for the first time before appellate forum, is a tactic designed to delay.

- (ii) Mohan Lal vs. Anandibai&Ors., 1971 (1) SCC 813 (Paras 5 & 6); and
- (iii) Dr. Vimla vs. Delhi Administration, AIR 1963 SC 1572 (Para 8).

Submissions of learned counsel Mr. G. Umapathy in Appeal No. 147 of 2018

280. The present appeal arises out of the impugned order dated 19.03.2018 passed by MERC in respect of Case No. 159 of 2016 filed by Sai Wardha Power Generation Ltd. (hereinafter referred to as Captive Generator) for declaration of Captive Generating Status of its Units 3 & 4 for Financial Year 2015-16). In the impugned

order, MERC held that Captive Generator has failed to fulfil the obligations arising out of MERC (Distribution Open Access) Regulations 2014 (Regulations 2014) in respect of supply of 56.63 MUs from the IPP Units 1 & 2 which allegedly did not form captive Units and therefore it would tantamount to consumption of electricity from the grid of 2nd Respondent viz., MSEDCL. However, in para 3.17 of impugned order, MERC held that Captive Generator fulfils the CGP criterion of atleast 51% consumption (in proportion to the shareholding of Captive Consumers, within $\pm 10\%$) in accordance with the 2nd proviso to Rule 3(1)(a)(ii) of Electricity Rules, 2005.

281. Pursuant to the Impugned Order 19.3.2018 which is subject matter of challenge, MSEDCL filed a Review Petition - Case No. 133 of 2018 before MERC seeking review of the said Order. MERC vide Order dated 22.10.2018 partly allowed the Review Petition filed by MSEDCL and interalia in para 10 directed as under:-

“..MSLDC is directed to submit the copy of the (E-mail) submission dated 17 January, 2018 to MSEDCL and TPC-D. SWPL shall submit the details regarding the exact date when the shareholding of Sona Alloys changed.

The Commission directs MSLDC and SWPL to submit all the details as required by MSEDCL within 10 days from the date of this Order for re-examining the CGP status for FY 2014-15.

The Commission directs MSEDCL to re-examine the status of SWPL as CGP or otherwise based on guidelines issued in Case No. 23 of 2017 and the issues raised by MSEDCL in this Case. TPC-D should also be actively involved by MSEDCL in such re-examination process.

MSEDCL should complete the above exercise within two months and inform SWPL about its findings in a clear and lucid manner. “.

Thus MSEDCL was directed to re-examine the status of Captive Generator as COP or otherwise based on guidelines issued in Case No. 23 of 2017.

282. It is submitted that Saiwarda and some of its captive consumers filed appeals against the Review Order (Appeal No. 38 of 2020 and No. 39 of 2020) and the said appeals are pending before this Hon'ble APTEL.

282. It is relevant to place on record that this Hon'ble APTEL recently passed an Order on 7.6.2021 in Tamil Nadu Power Producers Association vs. TNERC & Ors being Appeal No. 131 of 2020 and batch matters. The law laid down in this order is as under:-

- i) Verification of minimum shareholding and minimum consumption on proportionate basis for CGPs and Captive users to be strictly in terms of Rule 3 of Rules, 2005 can be strictly done on an annual basis. (para. 11.22)
- ii) Proportional consumption cannot be applied to an SPV (para. 12.16)
- iii) The minimum requirement of Rule 3 of Electricity Rules, 2005 is fulfilled, the rest of captive users not fulfilling the conditions, will have no impact to the overall captive structure. (para. 14.6)

283. Thus as per the above judgment, the calculations are to be done for CSS status for 2015-2016 as in this order Weighted average consumption is taken, SPV and AOP are considered same. 26% share holding considered is of complete year for consumption, whereas as per order only 31st March (end of financial year), share holding is to be considered. As this is common for all cases of 2015 to 2018 and every case is having multiple appellant, it would be desirable and in the interests the case, that the entirety of the matter be examined by MERC as per the above judgment of APTEL and appropriate orders are passed by MERC after hearing all the parties.

284. In the light of the findings in para 19.17 of the impugned holding that captive generator's unit 3 & 4 satisfy the CGP criterion of atleast 51% consumption (in proportion to the shareholding of Captive Consumers, within $\pm 10\%$) in accordance with the 2nd proviso to Rule 3(1)(a)(ii) of the Electricity Rules, 2005, having been set aside by MERC in the review order dated 22.10.2018 and the said issue of captive status has to be examined by MERC. This Hon'ble APTEL may direct the MERC to examine this aspect and pass a reasoned order in accordance with law.

285. In the light of the above, this Hon'ble APTEL may be pleased to allow the appeal and set aside the impugned order and render justice.

Submissions of learned counsel Mr. G. Umapathy in Appeal No. 152 of 2018

286. The present appeal arises out of the impugned order dated 19.03.2018 passed by MERC in respect of Case No. 159 of 2016 filed by Sai Wardha Power Generation Ltd. (hereinafter referred to as Captive Generator) for declaration of Captive Generating Status of its Units 3 & 4 for Financial Year 2015-16).

287. It is submitted that in the impugned order, MERC held that Captive Generator failed to fulfil the obligations arising out of MERC (Distribution Open Access) Regulations 2014 (Regulations 2014) in respect of supply of 56.63 MUs from IPP Units 1 & 2 which allegedly did not form captive Units and therefore would tantamount to consumption of electricity from the grid of 2nd Respondent viz., MSEDCL. However, in para 3.17 of the impugned order, it held that Captive Generator fulfils the CGP criterion of at least 51% consumption (in proportion to the shareholding of Captive Consumers, within +10%) in accordance with the 2nd proviso to Rule 3(1)(a)(ii) of the Electricity Rules, 2005. (Rules 2005).

288. Pursuant to the Impugned Order 19.3.2018 which is subject matter of challenge, MSEDCL filed a Review Petition - Case No. 133 of 2018 before MERC. MERC vide its Order dated 22.10.2018 partially allowed the Review Petition and directed MSEDCL to re-examine the status of Captive Generator as COP or otherwise based on guidelines issued in Case No. 23 of 2017. The Captive Generator and certain other captive consumers filed appeals being Appeal No. 38 of 2020 and No. 39 of 2020 against Review Order which are pending before this Hon'ble APTEL.

289. It is relevant to place on record that this Hon'ble APTEL recently

passed an Order on 7.6.2021 in Tamil Nadu Power Producers Association vs. TNERC &Ors being Appeal No. 131 of 2020 and batch matters. The law laid down by this Hon'ble APTEL in this order is as under:-

- iv) Verification of minimum shareholding and minimum consumption on proportionate basis for CGPs and Captive users to be strictly in terms of Rule 3 of Rules, 2005 can be strictly done on an annual basis. *(para. 11.22)*
- v) Proportional consumption cannot be applied to an SPV *(para. 12.16)*
- vi) The minimum requirement of Rule 3 of Electricity Rules, 2005 is fulfilled, the rest of captive users not fulfilling the conditions, will have no impact to the overall captive structure. *(para. 14.6)*

290. Thus as per the above judgment, the calculations are to be done for CSS status for 2015-2016 as in this order Weighted average consumption is taken, SPV and AOP are considered same. The 26% Shareholding considered is of complete year for consumption, whereas as per order only 31st March (end of financial year), share holding is to be considered. As this is common for all cases for the financial years 2015 to 2018 and every case is having multiple appellants, it would be desirable and in the interests of justice, that the entirety of the matter be examined by MERC as

per the above judgment of APTEL and appropriate orders are passed by MERC after hearing all the parties.

291. In light of the findings in para 19.17 of the impugned order on the Captive Status of captive generator for the financial year 2014-15 having been set aside by MERC's review order dated 22.10.2018, and the same have to be examined by MERC, this Hon'ble APTEL may be pleased to set aside the order under challenge and direct MERC to examine the matter in toto aspect and pass a reasoned order in accordance with law.

Finding and analysis

292. We have heard the Appellants, the Respondents, have gone through the appeals, written submissions, documents and our observations are as under:

APTEL's Judgment dated 7th June, 2021 in Appeal No. 131 of 2020 – Tamil Nadu Power Producers Association (TNPPA) Vs. Tamil Nadu Electricity Commission (TNERC) and Ors.

293. Rule 3 regarding the requirements of Captive Generating Plant reads as under:

"3. Requirements of Captive Generating Plant.-(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) 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:

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

(b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy (s) the conditions

contained in paragraphs (i) and (ii) of sub-clause (a) above including - ".

294. This Tribunal by Judgment dated 7th June, 2021 in Appeal No. 131 of 2020 – Tamil Nadu Power Producers Association (TNPPA) Vs. Tamil Nadu Electricity Commission (TNERC) and Ors. has declared the judgment dated 22.9.2009 of this Tribunal in appeal No.171/2008 titled as *Kadodara Power Pvt. Ltd. & Ors. Vs. Gujarat Electricity Regulatory Commission* as “per-incuriam” and held that the requirement of 51% consumption of electricity generated in proportion to their shares in ownership of the power plant within a variation not exceeding ten per cent is not applicable to a SPV. This Tribunal has returned this finding vide para 12.13 & 12.14 of the said judgment at internal pages 139-140 and the same reads as under:

“12.13 We have analyzed the submissions of the parties on the issue of treatment of an SPV as an AOP. As seen before, Rule 3 of the Rules deals with the requirements to be fulfilled to qualify as a captive. In the said rule, SPV as a CGP is given under Rule 3(1)(b). Further, it is also seen that Rule 3(1)(a)(i) has two provisos contemplating the manner in which the requirements to qualify as a CGP is to be fulfilled by a registered Co-operative society and an AOP. It is also seen that the said two provisos do not relate to Rule 3(1)(b) which deals with a SPV.

12.14 *We agree with the submission put forward by the Appellant that second proviso to Rule 3(1)(a) is a stand-alone provision and as such does not relate to Rule 3(1)(b). The Parliament in its wisdom has created an intelligible differentia under Rule 3, between a SPV and an AOP. It is clear from a reading of Rule 3 that second proviso to Rule 3(1)(a) which exclusively deals with an AOP, lays down that the captive user(s) shall hold not less than 26% ownership of the plant in aggregate and shall not consume less than 51% of the electricity generated, determined on an annual basis, in proportion to their ownership of the power plant. On the other hand, Rule 3(1)(b) exclusively deals with a SPV, and it only provides that the conditions mentioned in Rule 3(1)(a)(i) and (ii) are applicable to a SPV, with the second proviso not mandated to be applied to it. Thus, we find force in the argument of the Appellant that second Proviso to Rule 3(1)(a) is a stand-alone provision.”*

295. Thus, it was held by this Tribunal in TNERC judgment that requirement of proportionality for analyzing the consumption of 51% of the aggregate generated electricity by the identified captive unit/units of a SPV is not applicable in the case of SPV. It was further held that the condition of consumption of 51% of aggregate generated electricity has to be met by the consumers of SPV collectively on par with the registered cooperative society.

296. It has further been held that the shareholding of 26 % is to be considered at the end of the year on 31st March (paras 11.19 to

11.22, paras 13.5 to 13.6 and paras 16.7 to 16.10 of the Judgment). It has been held that the default by one consumer could not affect the others (paras 14.6 and 14.7 of the judgment).

297. It has been submitted that the appeal against the Kadodara Judgment is pending before the Hon'ble Supreme Court and the Judgment dated 7th June, 2021 in Appeal No. 131 of 2020 declaring the judgment dated 22.9.2009 of this Tribunal (Kadodara Judgment) as "per-incuriam" has not been stayed, set aside or modified. doc

Doctrine of prospective overrulingF PROSPECTIVE OVERRULING

297. The doctrine of prospective overruling was developed in *Golak Nath v. State of Punjab* [AIR 1967 SC 1643] wherein the Hon'ble Supreme Court held that the Hon'ble Supreme Court of India exercises power regarding a constitutional validity challenge and sets aside a law as lot of parties would have worked in the legal matrix, transactions would have been settled and thus, in this light instead of reopening the settled transactions, new interpretation that has been accorded and the law that has been set aside shall be only prospective so the change in law does not disturb the settled transactions. The relevant portion is reproduced below for ready reference:

"51. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the

beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its 'earlier decisions' is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

298. The doctrine of prospective overruling was considered subsequently in the below mentioned cases:

1. **Sarwan Kumar v. Madan Lal Aggarwal, (2003) 4 SCC 147: 2003 SCC OnLine** where it was held as follows:

"15...

The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship on those who had trusted to its existence. Invocation of the doctrine of "prospective overruling" is left to the discretion of the Court to mould with the justice of the cause or the matter before

the Court. This Court while deciding *Gian Devi Anand* case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in *Gian Devi Anand* case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in *Gian Devi Anand* case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] or any other case. Such a situation cannot be permitted to arise. **In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous.**

20. ...

This Court in *Gian Devi Anand* case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] did not lay down any new law but only interpreted the existing law which was in force. **As was observed by this Court in Lily Thomas case [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it**

stood right from the beginning as per its decision. In Gian Devi case [(1980) 17 DLT 197] the interpretation given by the Delhi High Court that commercial tenancies were not heritable was overruled being erroneous. Interpretation given by the Delhi High Court was not legal. The interpretation given by this Court declaring that the commercial tenancies heritable would be the law as it stood from the beginning as per the interpretation put by this Court. It would be deemed that the law was never otherwise. Jurisdiction of the civil court has not been taken away by the interpretation given by this Court. This Court declared that the civil court had no jurisdiction to pass such a decree. It was not a question of taking away the jurisdiction; it was the declaration of law by this Court to that effect. The civil court assumed the jurisdiction on the basis of the interpretation given by the High Court in Gian Devi case [(1980) 17 DLT 197] which was set aside by this Court.”

2. **In M.A. Murthy v. State of Karnataka, (2003) 7 SCC 517 : 2003 SCC (L&S) 1076 : 2003 SCC OnLine it was held as follows:**

“8. The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from

inception. *The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C. Golak Nath v. State of Punjab [AIR 1967 SC 1643] . In Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and Baburam v. C.C. Jacob [(1999) 3 SCC 362 : 1999 SCC (L&S) 682 : 1999 SCC (Cri) 433] .) It is for this Court to indicate as to whether the decision in question will operate prospectively. **In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision.** It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs...”*

3. In PV George P.V. George v. State of Kerala, (2007) 3 SCC 557 it was held as follows:

“19. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.

...

*29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. **The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf.***

299. The Hon'ble Supreme Court has held that doctrine of prospective overruling not only applies to constitutional validity cases, but also applies when a matter deals with statutory interpretation. However, the same can be applied only by the Hon'ble Supreme Court under Article 32 or Article 141 of Constitution of India or by the High Courts under Article 226 of Constitution of India.

300. If doctrine of prospective overruling has been applied by Hon'ble Supreme Court or Hon'ble High Court, the judgment shall specifically carve out that earlier judgment is overruled or law is overruled and the interpretation will be applicable prospectively which does not apply to settled transactions. In the present case, the Hon'ble Appellate Tribunal for Electricity ("**APTEL**") could not have applied the doctrine of prospective overruling. The Hon'ble APTEL vide Order dated June 07, 2021 in Appeal No. 131 of 2020-Tamil Nadu Power Producers Association v. Tamil Nadu Electricity Regulatory Commission &Ors. ("**TNPPA Order**") has simply interpreted Rule 3 of Electricity Rules, 2005.

301. The Hon'ble Supreme Court has repeatedly and consistently held that when a court gives an interpretation to a particular statute or rule that interpretation is deemed to have been applied since the beginning of that statute or rule. It is always to be interpreted in the manner as interpreted and not prospectively. The Hon'ble APTEL in TNPPA Order gave two (2) interpretations, namely (i) the analysis of the thresholds of shareholding and consumption should be undertaken at the end of the year and (ii) in case of a Special Purpose Vehicle (SPV), a duly constituted company, whether doctrine of proportionality will have no application. The interpretation of Rule 3 thus should be applied from the date of notification of Rule 3 i.e. from 2005.

302. In view of the same, for FY 2014-15, FY 2015-16, FY 2016-17 and FY 2017-18, Rule 3 should be interpreted only on two (2) counts:

1. First, the captive consumers should demonstrate compliance with twenty-six percent (26%) shareholding in the captive generating plant;
2. All the captive consumers put together who hold twenty-six percent (26%), not proportionately, have consumed fifty-one percent (51%) of power. Out of the mix of captive consumers one may have consumed ninety percent (90%) of the requisite consumption and the rest may have consumed another ten percent (10%) of required consumption, it would satisfy the requirement of consumption under Rule 3 because the doctrine of proportionality does not apply. Therefore, TNPPA Order binds all parties including this Hon'ble APETL and submissions regarding doctrine of prospective overruling do not apply in the matters.

303. In view of the above, **we are of the opinion** that the Judgment dated 7th June, 2021 in Appeal No. 131 of 2020 – Tamil Nadu Power Producers Association (TNPPA) Vs. Tamil Nadu Electricity Commission (TNERC) and Ors. holds ground, is a law and shall apply in this case.

Adoption of energy data furnished by MSLDC

304. In the proceedings before the State Commission in Case No. 77 of 2015 for determination of Captive Status of the Appellant for FY 2014-15, there were various issues raised during the course of proceedings in relation to the required metering data not being available. In this regard, the State Commission observed that all the

parties concerned did not undertake unit wise meter readings during the year. The State Commission in the order dated 09/02/2018 held as under:

“20. The Respondents have also raised the issue of availability of certified data of generation from all the SWPL Units from MSLDC and other relevant data mentioned earlier in this Order. This data is critical for establishing compliance with the CGP requirements of the Electricity Rules, 2005 by SWPL.

21. Hence, the Commission had directed MSLDC vide its Daily Order dated 23 February, 2017 to provide the certified data, but TPC-D submitted on 29 May, 2017 that MSLDC had not provided it. Subsequently, MSLDC submitted the energy injection data at the 220 KV Warora Lines I and II for FY 2014-15 as per ABT meter data. However, the GT wise ABT data was not available.

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

23. TPC-D has also contended that, in its affidavit in Case No. 62 of 2017, SWPL has also admitted that it does not have details of the Net Generation from each of its 4 Units (CGP and non-CGP) since it had not downloaded and

maintained a record of the Unit wise generation for the period May, 2014 to 28 July, 2017 (i.e. around 3 years). Thus, SWPL has itself admitted that, till April, 2014, the Unit-wise generation data was being downloaded and taken by MSLDC for each of the Generating Units. This practice was, however, discontinued from June, 2014. The Commission cannot understand why the established and proper practice of taking monthly metered data of every Unit was stopped from June, 2014. No explanation has been attempted by SWPL, MSLDC or the Distribution Licensees.

24. At the hearing held on 23 February, 2017, SWPL stated that it had supplied power from its non-CGP Units 1 and 2 to the Captive Users during outages of the CGP Units and, to that extent, no captive status is claimed. It had already excluded the energy supplied to Captive Users from these Units. SWPL or its Captive Users would pay the CSS for this consumption. However, for best reasons known to it, SWPL has not provided the quantum of such power or details of tripping of its CGP Units. Moreover, as explained subsequently in this Order, this statement of SWPL appears to be without basis.

25. The Commission finds it surprising that, although issues regarding the Group Captive status of Generators have been regularly raised for some years now, none of those concerned - SWPL, MSLDC or the Distribution Licensees – could provide the data necessary for determining the captive status of Units 3 and 4 of SWPL for FY 2014-15. Hence, the

Commission sought data on the generation schedules of these Units and the data on trippings in respect of all four Units from MSLDC. Based on the data provided by MSDLC vide its e-mail dated 17 January, 2018 and the submissions made by SWPL, the Commission notes the following, which is of relevance to the determination of the CGP status of Units 3 and 4 in FY 204-15:

...

305. In the above circumstances, the State Commission sought data on generation schedules of the units of the Appellant, and the data on trippings in respect of all four units from MSLDC. The said data was provided on 17.01.2018.

306. **We note** that SLDC is a statutory authority and has only provided the certified data. The SLDC is neither a contesting party nor an interested party to the dispute between the parties.

307. The State Commission has in the order dated 09.02.2018 held as under:

“

i. As per the generation details submitted by SWPL, set out at Table 7 of this Order, Unit 1 was operational only in October, 2014; Unit 2 was not in operation during the entire year. These were both non-CGP Units.

ii. This is corroborated by the tripping data for these non-CGP Units provided by MSLDC in the Table below:

...

- iii. *Table 11 shows that Unit 1 of SWPL was under outage from 30 January, 2014 till 9 October, 2014. After synchronizing with the grid for less than a day, it tripped again on 10 October, 2014 for a few hours and was then synchronized at 11:56 am on the same day. Unit 1 continued operations till 30 October, 2014, when it again tripped and the outage continued till the end of FY 2014-15. Thus, the nonCGP Unit 1 was operational only for around 21 days in 2014-15, while Unit 2 was not in operation at all.*
- iv. ***MSLDC has also provided the following outage information of CGP Units 3 and Unit 4:***
- ...
- v. *Thus, CGP Units 3 and 4 were also under outage for some time in October, 2014, while Unit 1 was in operation during a part of that month. The Commission has sought to correlate the period during which the CGP Units 3 and/or 4 were under outage and the non-CGP Unit 1 was in operation.*
- vi. ***The Commission notes that, even after considering the outage periods of CGP Units 3 and 4 during October, 2014, their generation as submitted by SWPL was much higher than the captive consumption in that month (and thus there might have been no need to provide them power from non-CGP Unit 1 during its days of operation in October). This is also evident from***

the CGP generation and captive consumption data for that month shown in Table 4 earlier in this Order.

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

308. Further, from the certified tripping data made available by MSLDC, the State Commission has determined that Units-3 and 4 were under outage for certain period in October 2014. However, the State Commission has determined that even after considering the outage periods of CGP Units 3 and 4 during October, 2014, their generation was much higher than the captive consumption in that month.

309. This is not disputed by MSEDCL and TPCL. Therefore, there was no question of there being a review entertained, which is only being used as an excuse for reopening other issues which have been settled by a considered decision.

310. In fact, even in the impugned order while reviewing the order dated 09.02.2018, it is not that the State Commission has held that the lack of unit-wise data, and injection from Unit-1 & 2 would vitiate the Captive Status of the Appellant. Had this been the case, the State

Commission would not have sought for certified MSDLC data in the first place.

311. **We note** that installation of unit wise SEM and the data of generation and supply unit wise is very relevant for the purpose of determination of captive status. It is a matter of record that since 2014 SWPGL or SLDC could not furnish unit wise data and therefore the commission in its order dt. 22.10.2020 in case No.175/2017 vide Para (20.70) has ordered an internal inquiry in the following terms:

“20.70 In light of the above, the Commission deems it appropriate to order an internal enquiry by these Licensees to find out whether there have been any lapses by the concerned officials, on the various issues highlighted above and why the compliance of the Commission’s Orders / Regulations / Relevant Metering Code / CEA Regulations were not done in true letter and spirit while dealing with SWPGL matter. The said administrative enquiry shall be conducted by Senior Management of STU, MSLDC, MSEDCL and TPC-D, fixing the responsibility, if needed and report of the outcome of the enquiry along with the details of corrective actions taken shall be submitted to the Commission within six months of the Order. However, it would not be out of place to mention here that the enquiry ordered being an independent departmental proceeding with the sole purpose of verifying the relevant compliance by the Licensees and to fix responsibility on the concerned officials for the lapses if any

found at the end of the enquiry, the outcome of the Enquiry Report does not absolve SWPGL of any of the shortcomings/failures/deficiencies on its part as recorded in this Order. Also, it will have no bearing whatsoever, on the liability of the Captive Users to pay CSS and ASC, if it is concluded in this Order that the captive compliance is not fulfilled.”

312. The State Commission had in the main order dated 09.02.2018 and corrigendum order dated 12.03.2018 found shortcomings on all parties, namely the Appellant, the distribution licensees including MSEDCL and also MSLDC.

313. **We note** that the issue of short-comings was primarily with regard to the unit wise metering data. The said issue is primarily attributable to the licensees. The unit wise meters have always been available and installed at the generating station of the Appellant. The meter readings were to be downloaded by the licensees/SLDC on a monthly basis. In fact, this was done by the licensees in the past till some time in 2013-14, but was discontinued for reasons for reasons best known to them. Thereafter, the meter readings were taken only at the sub-station level and not on unit wise-basis.

314. **We note** that the tripping data for each unit is available with the SLDC and is certified for each year of operation. The unit wise meters have the capability to store data for a period of 35 days. Therefore, data for the years 2014-15 and 2015-16 cannot be made

available at this stage. It is for this reason that the SLDC certified data is used by the State Commission for generating unit trippings and injections.

315.. The information as made available during the year 2013-14 was made available for the year 2014-15 for the declaration of the captive status. The captive status for the year 2013-14 was determined by the State Commission on the very same information as available based on SLDC data, which determination has also been upheld by the Hon'ble Tribunal.

316. **In view of the above, we are of the opinion** that decision of the State Commission for using the certified data furnished by MSLDC for determination of captive status of Unit No. 3 and 4 of Sai Wardha Power Generation Limited is just and fair.

Declaration of particular unit/units for captive status at threshold

317. From Rule 3 itself it is evident that the Special Purpose Vehicle (*SPV*) is required to identify at the threshold the captive unit/units for purpose of open access under Section 9 (2) of Electricity Act, 2003. This is also clear from the modalities provided by the Commission in its order dated 17.01.2018 in Case No. 23/2017.

318. SWPGL identified unit no. 3 and 4 for captive generation and accordingly filed petition with the State Commission for determination of captive status of unit no.3 and 4 of SWPGL.

319. The present proceedings are in respect of determination of captive status of Group Captive Power Plant wherein the obligation of consumers are as specified in Section 9 of the Electricity Act, 2003 ("EA 2003") read with Rule 3 of the Electricity Rules, 2005 ("Electricity Rules"). The captive consumers are required to hold 26% shares in the SPV and consume 51% of the power generated by the identified CPP units.

320. Units 3 and 4 were identified as captive and the consumers entered into Power Purchase Agreement ("PPA") for consuming power from only these Units 3 and 4 and accordingly, open access (OA) were also sought only for consuming power from these identified Units 3 and 4.

321. Further a management approval note granting OA permission to one of the consumers of TPCD annexed as Annexure A3 of the impleadment application filed by Tata Power Company Limited – Distribution in Case No. 77 of 2015 (FY 2014-15) before Ld. MERC contain the following terms and conditions on which basis OA permission was granted by TPC-D:

“ 9. Billing

9.1 Tata Power shall raise a monthly bill on Open Access Consumer based on the meter readings taken as per clause 8. This bill shall have adjustments for the energy

procured on open access based on Implemented Schedule uploaded by MSLDC. In the event of dispute or difference with respect to the monthly bill on the Open Access Consumer, the Open Access Consumer agrees to refer such dispute to the Internal Grievance Cell of Tata Power duly constituted as per the provisions of Electricity Act, 2003 and thereafter to Consumer Grievance Redressal Forum and Electricity Ombudsman.

9.2 Any consumption in the 15 minute time block, after adjusting for "Schedule with Tata Power" under open access in the respective 15 minute time block, shall be considered to be procured from Tata Power. If the units procured from Tata Power are within the reduced/revised contract demand, these units shall be charged as per the tariff approved by MERC...

...

11. Final Settlement for energy procured on open access:

11.1 Tata Power shall carry out final settlement of energy procured on open access for a month, through a credit note, only after the Maharashtra State Load Dispatch Centre ("MSLDC") conducts final frequency based settlement mechanism {"FBSM"} settlement for that month.

11.2 The final settlement of energy procured on open access shall be passed on to the Open Access Consumer in the form of a credit note within 15 days after receipt of final settlement bill from MSLDC. It is agreed between the Open Access Consumer and Tata Power that, Tata Power

shall carry out the final settlement only after receipt of settlement from MSLDC.”

322. Thus, TPCD according to terms and conditions imposed by itself was obliged to make adjustments and generate bills on the basis of proper certified data. It is not out of place to state that in the event TPCD did not have data, it was empowered to cancel the OA permission. Further, as the OA permission was sought only from Units 3 and 4 MSEDCL as well as TPCD ought to have given credits only for units generated from Units 3 and 4. It is non-performance of the obligations by the distribution licensees and for which consumers cannot be punished. It is well settled principle that “no man can take advantage of its own wrong” See *Indian Council for Enviro –Legal Action v. Union of India &Ors*, (2011) 8 SCC 161.

323. MSSSPL is a consumer of MSEDCL and SWPGL also falls in the jurisdiction of MSEDCL.

324. MSSSPL as a consumer complied with its obligations of holding shares and consuming power. MSSSPL relied on applicable law and assumed all other parties complied with their respective obligations.

325. On 19.03.2018, MERC passed the Impugned Original Order in favour of Sai Wardha meets the captive status for FY 2014-15. MERC also held that 56.63 MUs had been generated and supplied by Sai Wardha from its IPP Units 1 & 2 to its captive users without

any contract or approval. The said quantum of power is Unscheduled and cannot be accounted for as captive power and is deemed to have been drawn from the distribution licensees. Accordingly, the Distribution Licensees shall treat this power in accordance with law.

326. In view of the above, **we do not agree** with the submission of TPCL that Sai Wardha/its captive users ought to demonstrate compliance of Rule 3 (i.e. 26 % equity holding and 51 % aggregate consumption) basis all four units of Sai Wardha Power Plant and not just two units. **We are of the opinion** that the State Commission has rightly considered unit no.3 and 4 of Sai Wardha for determination of captive status.

ORDER

327. In view of the above, the impugned order dated 09.02.2018 (FY 2014-15) and impugned order dated 19.03.2018 (FY 2015-16) does not call for any interference by this Tribunal.

328. In view of the above, the impugned order dated 22.10.2020 (FY 2016-17) and impugned order dated 29.10.2020 (FY 2017-18) are hereby set aside with direction to the State Commission to pass the fresh orders in accordance with the opinion expressed in this judgment expeditiously within three months from the date of pronouncement of judgment.

329. In view of the above, the impugned review order dated 22.10.2018 (FY 2014-15) passed by Maharashtra Electricity Regulatory Commission in case no. 132 of 2018 and the impugned review

order dated 22.10.2018 (FY 2015-16) in case no. 133 of 2018 is hereby set aside.

330. All the 39 appeals and associated interim applications, if any, are disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERENCING ON THIS 26th DAY OF NOVEMBER, 2021.**

(Justice R.K. Gauba)
Judicial Member

(Ravindra Kumar Verma)
Officiating Chairperson

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REPORTABLE/NON-REPORTABLE
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