



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017**

No. F.11(1828)/DERC/2020-21/6987

**Petition No. 54/2020**

**In the matter of:**    **Petition challenging the determination of captive user status of Respondent Nos. 3-5 for FY-2018-19 by SLDC Delhi vide letter dated 01.07.2020, 02.09.2020 and 02.11.2020 under Rule 3 of the Electricity Rules, 2005**

**Tata Power Delhi Distribution Ltd.**

**.... Petitioner**

**Vs.**

**State Load Dispatch Centre(Delhi)**

**.....Respondent No. 1**

**BSES Yamuna Power Limited (BYPL)**

**.....Respondent No. 2**

**Duggar Fiber Pvt Ltd.**

**.....Respondent No. 3**

**Shiva Alloy Pvt Ltd.**

**.....Respondent No. 4**

**Avdhut Swami Metal Works Ltd.**

**.....Respondent No. 5**

**Coram:**

**Hon'ble Shri Justice S S Chauhan, Chairperson**  
**Hon'ble Dr. A. K. Ambasht, Member**

**Appearance:**

1. Mr. Buddy A Ranganadhan, Adv., TPDDL
2. Mr. Raunak Jain, Adv., TPDDL

**ORDER**

(Date of Order: 23.03.2021)

1. The instant petition has been filed by the Petitioner, challenging the Letters dated 01.07.2020, 02.09.2020 and 02.11.2020 issued by SLDC Delhi, that the Captive User Status of M/s Duggar Fiber Pvt. Ltd. (DFPL), M/s Shiva Alloy Pvt. Ltd. (SAPL) and M/s Avdhut Swami Metal Works Ltd. (ASMWL) have been wrongly determined for FY

**WEAR FACE MASK**

**WASH HANDS REGULARLY**

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2018-19, *de hors* the requirements of Rule 3 of the Electricity Rules, 2005. The Petitioner has sought the following relief(s) in the prayer:

- (i) Quash and set aside the impugned letters dated 01.07.2020, 02.09.2020 and 02.11.2020 of the Respondent No. 1 SLDC Delhi, wrongly determining the captive user status of open access consumers- Respondent Nos. 3-5;
- (ii) Hold and declare that the open access consumers, M/s DFPL, M/s SAPL and M/s ASMWL have not fulfilled the criteria of captive users for FY 2018-19 under Rule 3 of Electricity Rules, 2005;
- (iii) Hold and declare that the entire power consumed by the open access consumers, Respondent Nos. 3-5 are liable to be treated as normal supply to the consumers under Rule 3(2) of the Electricity Rules, 2005 and accordingly, Petitioner is entitled to claim CSS from the consumers of electricity within its area who have availed supply through other sources such as open access.

2. The Petitioner has submitted the following that:

- a) The 3 alleged group captive users - M/s DFPL, M/s SAPL and M/s ASMWL, have alleged weighted average shareholding of 12.21%, 9.57% ,7.97%, respectively in SPV- M/s Yoginder Powers Limited ("YPL") during FY 2018-19 and have signed power delivery agreements for alleged captive use. It is an admitted position that, M/s ASMWL became a shareholder of SPV M/s YPL from 24.07.2018 and not prior to this date. Thus, M/s ASMWL became entitled to consume power from the power plant of SPV M/s YPL only after the date of 24.07.2018 and was not entitled to consume power plant of M/s YPL for complete FY year.
- b) To resolve the dispute between Respondent Nos. 3-4 and the Petitioner regarding status of captive user and grant of NOC for open access, the Commission vide its letter dated 19.12.2017, inter-alia, clarified that the users M/s DFPL and M/s SAPL, would be eligible for grant of NOC for open access on submission of Bank Guarantee ("BG") for an amount equivalent to the Cross Subsidy Surcharge ("CSS") for the period of financial year for which open access was sought.
- c) This Commission vide its letter dated 27.02.2019 further specified the methodology for determination of captive status of open access customers –

M/s DFPL and M/s SAPL. Relevant portion of this Commission's Letter dated 27.02.2019 is reproduced below: -

“.....

2. The matter was examined and following issues emerged:

a) What should be the date of start for counting generation of plant under captive status?

*In this regard, it is clarified that in the instant case for the first year of declaring the plant under captive status, the date of grant of open access shall be considered as a start date for the financial year for counting the generation of the plant under captive status. From the subsequent year, total generation from 1<sup>st</sup> April to 31<sup>st</sup> March of a financial year shall be considered for determining the captive status of the generation station.*

b) .....

3. Accordingly, in the instant case, the Commission authorize SLDC, Delhi, to re-compute the captive status of M/s DFPL and M/s SAPL based on above methodology

.....”

- d) Petitioner vide Letter dated 14.10.2019 informed the Commission that the captive status of M/s SAPL for FY 2017-18 (period for which the consumer was taking power from M/s NCS Sugar) and FY 2018-19 (period for which consumer was taking power from M/s NCS Sugar and M/s YPL) was pending determination by SLDC. Further, the captive status of M/s DFPL for FY 2018-19 was also pending determination by Delhi SLDC. The Petitioner requested the Commission to direct Delhi SLDC to determine the captive status of existing as well as future applicants in a time bound manner and in the interim, permit the Petitioner to seek the enhancement of LC/BG amount to account for both principal and LPSC charges.
- e) In response to the letter dated 14.10.2019, this Commission vide its letter dated 17.10.2019, authorised the SLDC Delhi to compute the captive status of applicants (open access customers) based on the methodology specified by it, and further directed the SLDC to determine the captive status of pending applications on priority.
- f) The SLDC Delhi, vide the impugned letter dated 01.07.2020, incorrectly determined the captive user status of open access customers- M/s DFPL, M/s

SAPL and M/s ASMWL for FY 2018-19. The SLDC, Delhi vide the impugned letter dated 01.07.2020 has rightly noted the Adjusted Actual Consumption of M/s DFPL, M/s SAPL and M/s ASMWL as 3.874 MUs, 2.803 MUs and 2.593 MUs, respectively for FY 2018-19. In the same letter, SLDC has also noted the maximum permissible limit of consumption of M/s ASMWL as 1.583 MUs as per variation  $\pm 10\%$  in proportion to their shares in ownership of the power plant. Hence, it is clear that M/s ASMWL has consumed 2.593 MUs of energy while the permissible limit was only of 1.583 MUs, which is not in accordance with Rule 3 of the Electricity Rules, 2005. However, the SLDC has wrongly determined that the open access customers have met the equity and consumption norms specified under Rule 3 of the Electricity Rules, 2005.

- g) The Petitioner vide its letter dated 22.08.2020 wrote to SLDC Delhi regarding the determination of captive user status of M/s DFPL, M/s SAPL and M/s ASMWL and requested the SLDC Delhi to re-examine their captive user status for FY 2018-19.
- h) The SLDC, Delhi in response to Petitioner's Letter dated 22.08.2020, submitted a new table vide the impugned letter dated 02.09.2020, wherein the generation of plant i.e. M/s YPL at Ex-bus (after considering impact of delay in transaction through open access) in MUs for M/s ASMWL was erroneously shown to be 17.3528 instead of 10.5379 MUs (as shown earlier). In terms of this new table, the SLDC, Delhi arbitrarily increased the permissible consumption of M/s ASMWL from 1.583758 MUs to 2.607975 MUs and stated that the total energy consumed by M/s DFPL, M/s SAPL and M/s ASMWL was now 9.271347 MUs. The SLDC, Delhi on the basis of this new table wrongly concluded that all three of the alleged captive consumers of M/s YPL meet the criterion of captive consumption of 51%, in proportion to their shareholding within variation of  $\pm 10\%$ , for being classified as captive consumers of M/s YPL for FY 2018-19.
- i) Further SLDC, Delhi in its letter dated 02.09.2020 had mentioned that the consumption of 1.583 MUs with respect to M/s ASMWL was allowed only for CSS waiver as the same comes under captive permissible consumption as per shareholding of M/s ASMWL in SPV M/s YPL. Accordingly, it is the contention of the Petitioner that only 1.583 MUs should be considered while calculating the

consumption for 51% consumption criteria as units qualifying for CSS waiver and captive consumption cannot be different.

- j) If the percentage energy consumed by the group captive users is calculated taking into account the maximum permissible consumption allowed for M/s ASMWL, then the total energy consumed by the alleged group captive users- M/s DFPL, M/s SAPL and M/s ASMWL, is not 51% of the total energy generated by the Power plant of SPV M/s YPL during FY 2018-19 viz 8.261 MUs of 17.3528 MUs (48%).
- k) Two of the alleged group captive users – M/s DFPL and M/s SAPL have consumed power in proportion to their alleged weighted average shareholding during FY 2018-19, however, M/s ASMWL has consumed the power disproportionately to its shareholding i.e. beyond + 10% of power to be consumed in proportion to its shareholding percentage. Further, M/s DFPL, M/s SAPL and M/s ASMWL have collectively failed to consume 51% of the total energy generated by M/s YPL in FY 2018-19 considering maximum allowed quantum of M/s ASMWL in proportion to its alleged weighted average shareholding. Therefore, the alleged group captive users do not fulfil the criteria of 51% proportion of consumption for period of FY 2018-19 and the entire power generated by M/s YPL for FY 2018-19 should not be treated as supply by a generating company to the consumers through captive route under Rule 3(2) of the Electricity Rules 2005. The petitioner is further entitled to claim Cross Subsidy Surcharge ("CSS") from the consumers of electricity within its area who have availed supply through other sources such as open access.
- l) The Petitioner is entitled to claim CSS from the open access consumers of electricity within its area, who have availed supply from other sources through open access. In the present case, there is an impact of approx. Rs. 1.68 Cr. on account of CSS, which if allowed to go unrecovered, would seriously impact the cross-subsidizing consumers of the Petitioner.
- m) The Petitioner in its written submission has submitted that DERC has the jurisdiction to adjudicate upon the present dispute as under:
  - a) Clause 6.2 (i) of the Order dated 25.08.2020 passed by this Commission in the matter of: *Procedure for verification of Captive Generating*

*Plant (CGP) status in accordance to requirements in Rule 3 of the Electricity Rules, 2005, provides as under-*

*“6 Recovery of Cross Subsidy Surcharge (CSS) and additional Surcharge (AS):*

*.....*

*6.1 On Monthly Basis*

*.....*

*6.2 On Annual Basis*

*(i) If the Generator or the captive user(s) or the distribution licensee, as the case may be, is not satisfied with the status as determined by the Verifying authority, it may approach the Commission by 31<sup>st</sup> July of the Financial Year.*

*.....”*

**COMMISSION ANALYSIS**

- 3. Petition is filed by TPDDL challenging the determination of Captive User Status of Respondent Nos. 3-5 viz; M/s Duggar Fiber Pvt. Ltd.(DFPL), M/s Shiva Alloy Pvt. Ltd.(SAPL) and M/s Avdhut Swami Metal Works Ltd.(ASMWL) for FY 2018-19 by SLDC Delhi vide letters dated 01.07.2020, 02.09.2020 and 02.11.2020 under Rule 3 of the Electricity Rules, 2005.
- 4. It is observed that TPDDL has submitted that SLDC, Delhi has incorrectly determined the captive user status of Respondents viz; M/s Duggar Fiber Pvt. Ltd.(DFPL), M/s Shiva Alloy Pvt. Ltd.(SAPL) and M/s Avdhut Swami Metal Works Ltd.(ASMWL). TPDDL has further submitted that SLDC, Delhi vide its letter dated 01.07.2020 has stated that the upper 10% limit of consumption for Respondent No. 5 – M/s ASMWL is 1.583758 MUs. However, the actual consumption of M/s ASMWL is 2.593 MUs, which is clearly exceeding the norm of ±10% as per equity owned by M/s ASMWL.
- 5. It is noted that SLDC, Delhi in its letter dated 01.07.2020 has determined the captive status of M/s DFPL, M/s SAPL, M/s ASMWL based on the following computation:

Sr. No.	Captive User	WL Avg % of equity held in M/s YPL	% of consumption to be done by Captive user for meeting 51% consumption criterion	Generation of the plant at Ex-bus (after considering impact of delay in transaction through Open Access) in MUs	Permissible range for shareholding pattern for 51% consumption criterion			Adjusted actual consumption (Energy Available) Ltd. to Max schedule & actual gen at Gen Ex-bus after taking care of losses in MUs	Consumption permissible as per share holding in MUs	Whether adjusted actual consumption (d) is equal to or greater than lower permissible range (b)
					With in 0% variation in MUs	With in - 10% variation in MUs	With in +10% variation in MUs			
					a	b	c	d	e	
1	DFPL	12.21	20.9314	17.3528	3.632186	3.268967	3.995405	3.874261665	3.995405	Yes
2	SAPL	9.57	16.4057	17.3528	2.846848	2.562164	3.131533	2.803345189	3.131533	Yes
3	ASMWL	7.97	13.6629	10.5379	1.439780	1.295802	1.583758	2.593740403	1.583758	Yes
	Total	29.75	51		7.918815	7.126933	8.710696	9.271347	8.710696	

6. Further, based on the objections raised by TPDDL, SLDC, Delhi vide its letter dated 2.1.01.2020 has determined the captive status of M/s DFPL, M/s SAPL, M/s ASMWL based on the following computation:

Sr. N o.	Capti ve User	WL Avg% of equity held in M/s YPL	% of consumption to be done by Captive user for meeting 51% consumption criterion	Generati on of the plant at Ex-bus (after consideri ng impact of delay in transacti on through Open Access) in MUs	Permissible range for shareholding pattern for 51% consumption criterion			Adjusted actual consumpti on (Energy Aailed) ltd. to Max schedule & actual gen at Gen Ex-bus after taking care of losses in MUs	Consum ption permissi ble as per share holding in MUs	Whe the r adjuste d actual consum ption (d) is equal to or greater than lower permiss ible range (b)
					With in 0% variation in MUs	With in - 10% variation in MUs	With in +10% variation in MUs			
					a	b	c	d	e	
1	DFPL	12.21	20.9314	17.3528	3.632186	3.268967	3.995405	3.874261665	3.995405	Yes
2	SAPL	9.57	16.4057	17.3528	2.846848	2.562164	3.131533	2.803345189	3.131533	Yes
3	ASM WL	7.97	13.6629	17.3528	2.370886	2.133798	2.607975	2.593740403	2.607975	Yes
	Total	29.75	51		8.84992	7.964929	9.734913	9.271347257	9.734913	

7. SLDC, Delhi in its letter dated 01.07.2020 has computed the shareholding of M/s DFPL, M/s SAPL, M/s ASMWL as under:

(A) Share Holding of Duggar Fiber Pvt. Ltd. as Captive User of YPL as per Certificate issued by CA

Sr. No.	Upto	From	Total no of days	No of Equity	Total Share	Share Holding%	Wt Avg share holding%
(a)	(b)	(c)	(d)	(e)	(f)	(g)=(e*100)/f	(h)=(g*d)/365
1	23-07-2018	31-03-2018	114.00	1122600	4213900	26.64	8.32
2	24-07-2018	23-07-2018	1.00	998600	4213900	23.70	0.06
3	01-08-2018	24-07-2018	8.00	643700	4213900	15.28	00.33
4	29-09-2018	01-08-2018	59.00	450000	4213900	10.68	1.73
5	31-03-2019	29-09-2018	183.00	148500	4213900	3.52	1.77
	Total		365.00				12.21

(B) Share Holding of Shiva Alloy Pvt. Ltd. as Captive User of YPL as per Certificate Issued by CA

Sr. No.	Upto	From	Total no of day	No of Equity	Total Share	Share Holding%	Wt Avg Share holding%
(a)	(b)	(c)	(d)=(b-c)	(e)	(f)	(g)=(e*100)/f	(h)=(g*d)/365
1	29-08-2018	31-03-2018	151.00	330500	4213900	7.84	3.24
2	31-03-2019	29-08-2018	214.00	454500	4213900	10.79	6.32
	Total		365.00				9.57

(C) Share Holding of M/s Avdhut Swami Metal Works Ltd. as Captive User of YPL as Certificate issued by CA

Sr. No.	Upto	From	Total no of day	No of Equity	Total Share	Share Holding%	Wt Avg Share holding%
(a)	(b)	(c)	(d)=(b-c)	(e)	(f)	(g)=(e*100)/f	(h)=(g*d)/365
1	24-07-2018	31-03-2018	115.00	0	4213900	0.00	0.00
2	01-08-2018	24-07-2018	8.00	142800	4213900	3.39	0.07
3	29-09-2018	01-08-2018	59.00	369200	4213900	8.76	1.42
4	31-03-2019	29-09-2018	183.00	544900	4213900	12.93	6.48
	Total		365.00				7.97

(D) Share Holding of all Captive Users of YPL as per Certificate issued by CA for FY 18-19

Sr. No.	Name of Share Holder	Wt. Avg Share Holding %	Wt. Avg. Share Holding %	Remarks
1	M/s DFL	12.21	29.75	Captive Users
2	M/s SAPL	9.57		
3	M/s ASMW	7.97		
4	Promoters & Others	70.25	70.25	Others
Total		100.00	100.00	

8. From the submission of Petitioner, it is observed that issue is mainly raised regarding consideration of total generation of the plant in case of M/s ASMWL, i.e., whether



the total generation of 17.3528 MUs during the FY 2018-19 is to be considered or 10.5379 MUs is to be considered based on generation from the date of open access (August, 2018) to this captive user i.e. M/s ASMWL to 31.03.2019.

9. Rule 3 of the Electricity Rules, 2005 stipulates the requirement of captive generation plant as under:

***“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.*

*.....  
.....”*

10. DERC vide its letter dated 17.10.2019 has authorized SLDC, Delhi to compute the captive status of all applicants on priority basis based on methodology specified in determination of captive status for M/s Duggar Fibre and M/s Shiva Alloy Pvt. Ltd. Further, DERC vide its letter no. F.17(17)/DERC/Engg./17-18/5862/3662 dated 27.02.2019 has clarified as under:

2. a) *What should be the date of start for counting generation of plant under captive status?*

*In this regard, it is clarified that in the instant case for the first year of declaring the plant under captive status, the date of grant of open access shall be considered as a start date for the financial year for counting the generation of the plant under captive status. From the subsequent year, total generation from 1<sup>st</sup> April to 31<sup>st</sup> March of a financial year shall be considered for determining the captive status of the generation station.*

b) *Whether the consumption is to be considered based on scheduled drawl or actual consumption on monthly or slot wise in a time block of 15 minutes.*

*In this regard, it is informed that as per the provisions of Open Access Order dated 01.06.2017 where the charges are applicable based on actual energy drawl through open access, such energy drawl is considered as actual energy drawn through open access limited to a maximum of scheduled open access energy during that time block.*

11. It is observed that M/s DFPL & M/s SAPL are having shareholding pattern from 31.03.2018 and SLDC, Delhi has considered the total generation of plant during FY 2018-19 for determination of captive status of these applicants. The generation of 17.3538 MUs has been considered by SLDC, Delhi in its letter dated 02.11.2020, for all these applicants including M/s ASMWL. As per Rule 3(1)(a)(ii) of the Electricity Rules, 2005, for determination of not less than 51% of consumption of the aggregate electricity generated by captive users is to be computed with respect to generation of the plant. The criteria of not less than 51% of consumption cannot be computed based on two values of generation of plant for different captive users. Since, M/s DFPL & M/s SAPL were captive users from the start of financial year, therefore, the total generation of 17.3528 MUs is to be considered for determination of Captive Generating Plant status. SLDC, Delhi in its letter dated 02.11.2020, has also considered 17.3528 MUs as total generation of the plant, which is in order. The consumption of 9.2713 MUs is around 53.43% (9.2713/17.3528), which meets the criterion of *'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.'*
12. Further, it is observed that SLDC, Delhi in its letter dated 02.11.2020 has stated that *'the average shareholding pattern when computed considering based on the number of days the shares were held by captive user(s) during the year appropriately factors in the impact of the time when either the shareholding of any captive user has undergone a change or new captive users have been added to the captive structure. Consequently, no adjustment is required to be done in the annual generation to be considered for the purpose of undertaking the proportionality test'*. The view of SLDC Delhi appears to be in order to take

care of proportionality during the year. Therefore, the energy consumed by M/s DFPL, M/s SAPL, M/s ASMWL is in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent as per table at para 6 of the order.

13. The Petitioner has not raised any issue regarding the computation of shareholding pattern. Therefore, there appears no error in the methodology of computation of Captive User Status of the M/s Duggar Fiber Pvt. Ltd.(DFPL), M/s Shiva Alloy Pvt. Ltd.(SAPL) and M/s Avdhut Swami Metal Works Ltd.(ASMWL) by SLDC, Delhi.
14. In view of the above, there is no merit in the Petition which requires admission or intervention of the Commission, accordingly, the Petition is dismissed.

**Sd/-**  
**(Dr. A.K. Ambast)**  
**Member**

**Sd/-**  
**(Justice S S Chauhan)**  
**Chairperson**