

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

Thiru M. Chandrasekar ... **Chairman**
and
Thiru K. Venkatasamy ... **Member (Legal)**

M.P. No.7 of 2021

Tamil Nadu Generation and Distribution
Corporation Limited
144, Anna Salai
Chennai – 600 002.
Represented by its Chief Financial Controller /
Deposits and Documentation

... **Petitioner**
Thiru. M.Gopinathan
Standing Counsel for TANGEDCO)

Vs.

1. Mr.G.Ramachandran, Resolution,
Professional of M/s. Sai Regency Power
Corporation Private Limited, F-10,
Syndicate Residency,
No.3, Dr. Thomas 1st Street,
Off South Board, T.Nagar, Chennai-600017.
2. Brakes India Private Limited,
3. ChemplastSanmar Limited,
4. Harshini Textiles Mills Ltd,
5. Jagannath Textile Mills Ltd
6. Sri Rameshwar Textiles
7. Lakshmi Mills Company Limited
8. M/s. ABI Showatech India Ltd,
9. MRF Ltd,
10. Orchid Chemicals Pharmaceuticals Ltd
11. PrecotMeridian Ltd
12. Sundaram Clayton Limited,
13. TVS Srichakra Limited. ... **Respondents**

(Thiru Rahul Balaji, Advocate for
R-2, R-4, R-5, R-7 to R-13)

(ThiruAnandK.Ganesan
Advocate for R-1)

(ThiruDevDakshan, Advocate from
M/s. Shree Law Services for R-3)

Dates of hearing: 02-02-2021; 09-03-2021; 23-03-2021;
15-04-2021; 15-06-2021; 13-07-2021;
10-08-2021; 31-08-2021; 28-09-2021;
15-12-2021 and 11-01-2022

Date of order : 19-04-2022

The M.P.No. 7 of 2021 came up for hearing on 11-01-2022. The Commission, upon perusal of the petition and connected records and after hearing the submissions of the petitioner and the respondent hereby makes the following order:-

1. Prayer of the Petitioner in M.P No. 7 of 2021:-

The prayer of the Petitioner in M.P. No. 7 of 2021 is to declare M/s. Sai Regency Power Corporation Pvt Limited, HT. SC. No. 059124780032, Ramnad EDC is not a Captive Generating Plant for the Financial Year 2019-20 and their captive users are liable to pay Cross Subsidy Surcharge for an amount of Rs.10,22,41,106/- for disqualification of Captive status.

2. Facts of the case:-

This petition has been filed to declare M/s. Sai Regency Power Corporation Pvt Limited, HT. SC. No. 059124780032, Ramnad EDC is not a Captive Generating Plant for the Financial Year 2019-20 and their captive users are liable to pay Cross Subsidy Surcharge for an amount of Rs.10,22,41,106/- for disqualification of Captive status.

3. Contentions of the Petitioner:-

3.1. The present Miscellaneous Petition seeks to declare that M/s. Sai Regency Power Corporation Pvt. Ltd., HT. SC. No. 059124780032, Ramnad EDC is not a Captive Generating Plant for the Financial Year 2019-20 and their captive users are liable to pay Cross Subsidy Surcharge for an amount of Rs.10,22,41,106/- for disqualification of Captive status.

3.2. The Electricity Act, 2003 define the Captive Generating Plant under section 2(8) as follows:

" xxx

2. (8). "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 co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association.

Xxx "

3.3. In this connection, Section 42 of the Electricity Act, 2003 describes as follows:

"42. Duties of distribution licensees and open access:

xxxx

The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access may be allowed before the cross subsidies are eliminated on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilized to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced and eliminated in the manner as may be specified by the State Commission:

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

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by

notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access .

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply. XXXX"

3.4. Further, the Tamil Nadu Electricity Regulatory Commission had issued Grid Connectivity and Intra-State Open Access Regulations – 2014 which reads as follows:

"23. Cross subsidy surcharge:

(1) If open access facility is availed of by a subsidizing consumer of a Distribution Licensee, then such consumer, in addition to transmission and/or wheeling charges, shall pay cross subsidy surcharge as determined by the Commission. Cross subsidy surcharge determined on Per Unit basis shall be payable, on monthly basis, by the open access customers based on the actual energy drawn during the month through open access. The amount of surcharge shall be paid to the distribution licensee of the area of supply from whom the consumer was availing supply before seeking open access".

3.5. From the above, it could be clearly observed that if the above provisions are read in conjunction with each other, Cross Subsidy

Surcharge shall not be leviable in case, Open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

3.6. It is most pertinent to note that in exercise of powers conferred by section 176 of the Electricity Act, 2003 (Act 36 of 2003), the Central Government issued Electricity Rules-2005 for requirements of Captive Generating Plant. The Rule-3 envisages the requirements of Captive Generating Plant as follows:

"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 a special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating stations satisfy(ies) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including -

Explanation:-

(1)

The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and

(2)

the equity shares to be held by the captive user(s) in the generating stations shall not be less than twenty six percent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

Illustration: *In a generating station with two units of 50 MW each namely*

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

(2).

It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-

rule(1)aboveismaintainedandincasetheminimum percentageofcaptive useisnotcompliedwithinyanyear,theentireelectricitygeneratedshallbe treated as if it is a supply of electricity by a generating company.

Explanation.- (1) For the purpose of this rule:

- a. "Annual Basis" shall be determined based on a financial year;*
- b. "CaptiveUser"shallmeanthe enduserof theelectricity generatedinaCaptiveGeneratingPlantandtheterm "Captive Use" shall be construed accordingly;*
- c. "Ownership"inrelationtoageneratingstationorpowerplant setupbyacompanyoranyotherbodycorporateshallmean the equityshare capitalwith voting rights. In other cases ownership shallmeanproprietaryinterestandcontroloverthe generating station or power plant;*
- d. "SpecialPurposeVehicle"shallmeanalegalentityowning, operatingandmaintainingageneratingstationandwithno other business or activity to be engaged in by the legal entity."*

3.7. From the above, it can be understood that the twin rules of "Ownership" and "Consumption" have to be satisfied as per the Electricity Rules-2005 in order to qualify as a Captive Generating Plant. If the status of a Captive generating plant is lost due to non-fulfilment of any one of the conditions or both, the entire electricity generated from such plant in a year shall be treated as a supply of electricity by a generating company. In such cases of disqualification, Cross Subsidy Surcharge has to be levied for the entire adjusted units/consumed by

the Users treating such consumption as though it was supplied by the respective Generating Plant, as per the proviso 4 of Section 42 (2) of the Electricity Act, 2003 which clearly states that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

3.8. The TNERC issued R.A.No.7 of 2019 dated.28.01.2020, wherein the relevant portion which held as follows:

"Xxx

7.9.4. By 30th of April, all the generators shall furnish relevant data of generation, auxiliary consumption, consumption of captive users for each month of the preceding financial year in excel format as per Format V annexed, in hard and soft copies. The generators shall furnish details of paid up equity share capital with voting rights held by each captive user, and compliance under Rule-3 as per format enclosed. Documents to be furnished for annual verification of captive status are as follows:

- 1. Documents stated in para 7.4.4*
- 2. Statement in Format V [A and B] annexed to this procedure.*

Xxx "

3.9. Due to outbreak of COVID 19, the TNERC issued SMP dated 24.4.20 vide ref (3) which is stated below,

"XXX

4.3 As required in the Procedure specified in the said R.A.no.7 of 2019, under Para 7.9.4 of the Order, the CGPs are to submit the documents on their own by 30th April in regard to FY 19-2020; but in the meanwhile lock down has come into force. In view of this, the CGPs are permitted to furnish the documents, for the

*year 2019-20, within one month from the date of lifting of Lock down in their respective area; and the Licensee shall complete the verification process within three months from the date of receipt of prescribed documents. For the year 2019-20, no separate notice, calling for the documents, will be issued by the Distribution Licensee. From the FY 2020-21, relevant documents shall be furnished as per para 7.9.4 of the said R.A.7 of 2019
XXX"*

3.10. Meanwhile TANGEDCO has filed Miscellaneous petition to TNERC in MP 23 of 2020 in the matter of furnishing the documents by CGPs praying:

*"XXX
Seeking to issue suitable direction in SMP 1 of 2020 dated 24.4.2020 to the captive Generators and the distribution licensee in the matter of submission/Collection of documents for verification of CGP status in view of the relaxations provided by GOTN under various G.Os during the COVID lockdown period
XXX"*

3.11. Based on the above M.P, the Commission has ordered in daily order dated 29.9.2020 as below:

*"XXX
Commission directed the respondents to submit the relevant documents to TANGEDCO
XXX"*

3.12. Also, the TNERC has ordered in daily order dated 13.10.2020 as below:

*"XXX
Commission directed the respondents to submit their documents on or before 31st October, 2020 in accordance with the direction in R.A.No.7 of 2019.*

XXX”

3.13. Further, R.A.No.7 of 2019 states as below:

“Xxx

7.9.11. Failure to furnish data, the documents for the purpose of annual verification within the time frame affixed in this procedure for verification of CGP status would empower the Licensee determine the status of the plant with the available data with the Licensee.

Xxx”

3.14. M/s. Sai Regency Power Corporation Private Limited, HTSC No. 059124780032 has not submitted the documents. Hence, CGP verification was carried out after reviewing:

- i) the documents submitted by the generator at the time of obtaining captive wheeling approval; and
- ii) the documents downloaded from Public domain;.

3.15. In this regard, the following is stated:

3.15.1) The Generator M/s. Sai Regency Power Corporation Private Limited obtained captive wheeling approval for change in captive users during January 2019 by furnishing certificate of Chartered Accountant given by M/s. UmamaheswaraRao& Co, Hyderabad dated 11.01.2019 with the details of % of Equity Share capital held by captive users as detailed below:

No	Class of Equity shares	Number of equity shares	Value per Equity share (Rs.)	Amount of equity share capital (Rs.)	% of holding based on equity capital	Number of voting rights	% of holding based on voting rights
1	Captive users (Class A)	43,60,000	10	4,36,00,000	26.08%	43,60,000	26.08%
2	Others (Class B)	1,23,60,000	10	12,36,00,000	73.92%	1,23,60,000	73.92%
Total		1,67,20,000		16,72,00,000	100.00%	1,67,20,000	100.00%

3.15.2) The MOA dated of M/s. Sai Regency Power Corporation Private Limited downloaded from MCA website states about the liability clause as follows:

*"*V. The authorized share capital of the company is Rs. 41,12,00,000 (Rupees Forty One Crores Twelve Lakhs Only) divided in to 2,10,00,000 (Two Crore Ten Lakhs only) Equity Shares of Rs. 10/- (Rupees Ten) each and 2,01,20,000 (Two Crores One Lakh and Twenty Thousand only) Preference Shares of Rs. 10/- (Rupees Ten) each with rights, privileges and conditions attached thereto as are provided by the Regulations of the Company for the time being with power to increase or reduce the capital of the company and to divide the shares in the capital for time being in to several classes and to attach thereon respectively with such preferential, deferred, qualified or special rights, privileges or conditions as may be detemined by or in accordance with the Articles of Association of the company for the time being and to vary, modify or abrogate any such rights, privileges or conditions in such manner as may be permitted by the Companies Act, 1956 or provided by the Articles of Association of the Company for the time being.*

**Altered vide Resolution passed at Extraordinary General Meeting held on 15th March 2011"*

From the above, it is clear that there are 2 Class of Equity shares for M/s. Sai Regency Power Corporation Private Limited namely, Class A Equity Shares and Class B Equity Shares and the Authorized Share Capital of the Company is Rs.41,12,00,000/-.

3.16. The relevant extract of the AOA of M/s. Sai Regency Power Corporation Private Limited downloaded from the MCA website states about the voting rights of the Equity shareholders are as follows:-

<i>"Kinds of Equity</i>	<i>4.b.</i>	<i>The Equity shares of the company shall consist of the following:-</i>
		<i>(i) Class A Equity Shares which shall be at all times at least twenty six percent of the total Power Equity Shares in the Company; or</i>
		<i>(ii) Class B Equity Shares which shall be such balance of the total outstanding Power Equity Shares In the Company,</i>
		<i>(iii) Common Equity shares</i>
<i>Rights & Obligations of Class A Shareholders</i>	<i>4.c.</i>	<i>Class A Equity share holders would be entitled to the following rights and obligations</i>
		<i>(i) Class A Equity Shares shall be Issued only to persons, firms, companies private or public. who have an industrial establishment or propose to establish such industry, using High tension power from Grid or Tamil Nadu Electricity/Other Licensee's with the sole purpose of obtaining power from the designated captive units of the Company.</i>
		<i>(ii) Class A Equity Shareholders shall be entitled to such portion of the electrical energy produced by the power plant and as determined and distributed by Class B Equit1 Shareholders from time to time.</i>
		<i>(iii) In tile event of any Class A Shareholder not consuming or using his entitlement of the electrical</i>

		<p><i>energy produced by the power plant, he may opt to surrender the same to the company as per applicable provisions and such surplus or unutilized energy shall be offered by the Company to other Class A Shareholders or be dealt by Class B Shareholders in the manner that they deem fit. If the shares are transferred to any other party the transferee shall be entitled to use the energy quota from the date of registration of such transfer in the Registrar of the company and the shareholder who surrenders the energy shall cease to be a User Member and shall not have any right whatsoever in the company or on its energy generated.</i></p>
		<p><i>(iv) All entitlements of demand and energy from (he company and specific variations thereof, If any, with respect to the Class A Shares shall be governed by the appropriate power delivery agreement and choice of Tariff Plan, salting out the terms and conditions of the Class A members' entitlement to power including the price and all other terms on the exercise of (he entitlement, entered into by each such Class A member and !he Company.</i></p>
		<p><i>(v) Class A Shareholders shall be entitled to a dividend, of 1/4th of the dividend rate declared for Class B shareholders with a cap of 0.01% of the face value or a share, from the distributable profit (if any), after the claims of Preference Shareholders (dividend declared in tile current year and the cumulative dividend for the past years in which dividend was due but not paid) have been met.</i></p>
<p><i>Rights & Obligations of Class B Shareholders</i></p>		<p><i>4. d. Class B Equity shareholders would be entitled to the following rights and obligations</i></p>
		<p><i>(i) Class B Shareholders 911811 have exclusive and sole power of conducting and controlling the affairs of the company and make all decisions of operations and financing thereto Including but not restricted to expansion projects, alternative fuel sourcing, new business opportunities and any collaborations that the company may wish to undertake from time to time.</i></p>

		<i>(ii) Class B shares shall be issued to Project Sponsor, developers, equipment suppliers. Operations & Maintenance Contractors and Financial Investors including Sectoral, infrastructure funds, Private or Public, who jointly finance, construct and operate the Captive plant for collective benefit of Power Equity shareholders.</i>
		<i>(iii) Insofar as day-to-day management of affairs or the company. Class B Equity shareholders shall enjoy the sole power and shall be responsible for:</i>
		<i>a) carrying on the affairs of the company in a transparent and fair manner with adherence to all applicable laws and regulations;</i>
		<i>b)ensuring proper functioning of the power plant with maximum efficiency and In accordance with proper standards;</i>
		<i>c) balancing the disparate interests or User Members and to carry on the operations of the power plant lor the common collective benefit of all User members in an Impartial and fair manner.</i>
		<i>d)negotiating price with individual captive consumers, spares arrangements, operations and maintenance of the various power plants, renewal / renegotiation or fuel supply arrangements, periodic allocation of energy generation and disposal of surplus ina timely manner.</i>
		<i>(iv) Class B Equity Shareholders may. if required, would provide the necessary financial support by way of subscribing to Preference share capital of the company, unsecured loans, and also by way of providing services in syndication of requisite Debit Facilities for setup of all requisite facilities of the company.</i>
		<i>(v) Class B Equity Shareholders shall be entitled to dividend at a rate recommended by the Board, from the distributable profits (if any) after the claims of Preference Shareholders (dividend declared in the current year and the Cumulative dividend for the past years in which dividend was due but not paid) have been met.</i>

		<i>(vi) Class B Equity Shareholders primary entitlement shall be to exclusively enjoy all financial and economic benefits arising out of setup and operation of the plant and as provided for under these Articles.</i>
		<i>(vii) The Board of Directors of the company shall be authorized to avail of the expert services of Non-User members or their affiliates for the benefit of the company.</i>
<i>Rights & Obligations of Class A Shareholders</i>	<i>4.a.</i>	<i>Common Equity shareholders would be entitled to the following rights and obligations</i>
		<i>(i) Common Equity Shares of the Company shall be allotted for any additional funds and new equities required by the company from time to time.</i>
		<i>(ii) Such Common Equity Shares would be in addition to the Power Equity Shares already issued by the Company until date, and shall form the overall Equity Capital of the Company with respect to voting and dividend rights thereto.</i>
<i>Voting Rights</i>	<i>4.d.</i>	<i>Subject to the provisions or the Act, (and in particular of Sections 87 and 92 (2) (thereof) and these Articles:</i>
		<i>(i) Upon a show of hands every member holding equity shares and entitled to vote and present in person (including a attorney or a representative of a body corporate as mentioned in the succeeding Article contained herein these Regulations) shall have one vote;</i>
		<i>(ii) Upon a poll the voting right of every member holding equity shares and entitled to vote and present in person (including a body corporate present as aforesaid or by proxy shall be in proportion to his share in the paid-up equity capital of the company.</i>
		<i>(iii) The voting right of every member holding preference shares, if any, shall upon show of hands or upon a poll, be subject to the provisions, limitations and restrictions laid down in Sec.87of the Act.”</i>

From the above, it is clear that on a show of hands every member holding equity shares shall have one vote.

3.17. The MGT-7 of M/s. Sai Regency Power Corporation Private Limited for FY 2018-19 downloaded from MCA website states as follows:

“IV.SHARE CAPITAL, DEBENTURES AND OTHER SECURITIES OF THE COMPANY

(i) SHARE CAPITAL

(a) Equity Share Capital

Particulars	Authorized Capital	Issued Capital	Subscribed Capital	Paid up Capital
Total Number of Equity Shares	21,000,000	16,720,000	16,720,000	16,720,000
Total Amount of Equity Shares (in Rupees)	210,000,000	167,200,000	167,200,000	167,200,000

Number of Classes - 2

Particulars	Authorized Capital	Issued Capital	Subscribed Capital	Paid up Capital
Class A Equity Share				
Number of Equity Shares	5,460,000	4,360,000	4,360,000	4,360,000
Nominal value per Share (in rupees)	10	10	10	10
Total Amount of Equity Shares (in Rupees)	54,600,000	43,600,000	43,600,000	43,600,000

Particulars	Authorized Capital	Issued Capital	Subscribed Capital	Paid up Capital
Class B Equity Share				
Number of Equity Shares	15,540,000	12,360,000	12,360,000	12,360,000
Nominal value per Share (in rupees)	10	10	10	10
Total Amount of Equity Shares (in Rupees)	155,400,000	123,600,000	123,600,000	123,600,000

From the above, it is clear that the total paid up Equity Share capital of M/s. Sai Regency Power Corporation Private Limited is Rs.16,72,00,000/- with Class A Equity Share Capital of Rs.4,36,00,000/- and Class B Equity Share Capital of Rs. 12,36,000/-.

3.18. The list of shareholders as on 31.03.2019 downloaded from MCA website have been cross checked with the shareholding furnished by Chartered Accountant M/s. UmamaheswaraRao & Co, Hyderabad dated 11.01.2019. Further, the shareholding furnished by Chartered Accountant M/s. UmamaheswaraRao & Co, Hyderabad dated 11.01.2019 has included M/s. Regency Ceramics Limited as one of the captive user, but as per TANGEDCO's in-principle wheeling approval,

M/s. Regency Ceramics Limited is not a captive user. Hence, the % of shareholding held by the captive users as on 31.03.2019 annexed in MGT-7 of M/s. Sai Regency Power Corporation Limited is as follows,

No	Class of Equity shares	Number of equity shares	Value per Equity share (Rs.)	Amount of equity share capital (Rs.)	% of holding based on equity capital	Number of voting rights	% of holding based on voting rights
1	Captive users (Class A)	43,50,000	10	4,35,00,000	26.02%	43,50,000	26.02%
2	Others (Class A)	10,000	10	1,00,000	0.06%	10,000	0.06%
3	Others (Class B)	1,23,60,000	10	12,36,00,000	73.92%	1,23,60,000	73.92%
Total		1,67,20,000		16,72,00,000	100.00%	1,67,20,000	100.00%

Hence, it is seen from the above table, the captive users of M/s. Sai Regency Power Corporation Pvt. Ltd possess not less than 26% of the total paid-up Equity Share Capital in the Generating Plant and fulfils the ownership criteria.

3.19. Further, the verification of Energy Consumption Criteria on an annual basis is as follows:

A.	Total generated units of a generating plant/ Station identified for captive use	6,48,95,000
B.	Less : Auxiliary Consumption in the above in units	
C.	Net units available for captive consumption (Aggregate generation for captive use)	6,48,95,000
D.	51% of total generation available for captive consumption in units [A*51%]	3,30,96,450
E.	Actual adjusted/consumption by Captive users	6,12,22,219
F.	Consumption % actual adjusted/consumed units by the captive users with respect to aggregate generation for captive use	94.34%

3.20. As M/s. Sai Regency Power Corporation Private Limited consumes 94.34% of the annual generation, the test of proportionality to be applied as detailed below:

SAI REGENCY POWER CORPORATION LIMITED												
Consumption criteria vide Rule 3 of Electricity Rules, 2005					(As per Format V-B prescribed in RA.No. 7 of 2019)							
2019-20												
<u>Test of proportionality for captive users</u>												
51% of total electricity generated during 2019-20*												
Sl. No	Name of Shareholder	No. of equity shares of value Rs. 10/-		% to be consumed on pro rata basis by each captive user	100% annual generation in MUS (X)	Annual Auxillary Consumption in MUS (Y)	Generation Considered to verify consumption criteria in MUS (X-Y)*51%	Permitted Consumption as per norms in MUS			Actual consumption	Whether Consumption on norms met
		As per Share Certificate as on 31st March 2019	% of ownership through shares in Company / unit of CGP					With 0% variation	(-) 10%	(+) 10%		
1	Brakes India Private Limited	75,00,000	4.49%	17.24%	64,895,000	-	33,096,450	5,706,284	5,135,656	6,276,913	13,240,259	No
2	Jagannath Textile Mills Ltd.,	52,50,000	3.14%	12.07%				3,994,399	3,594,959	4,393,839	8,111,885	No
3	Lakshmi Mills Company Limited	52,50,000	3.14%	12.07%				3,994,399	3,594,959	4,393,839	8,068,475	No
4	Harshini Textile Mills Ltd	7,50,000	0.45%	1.72%				570,628	513,566	627,691	1,220,228	No
5	Chemplast Sanmar Ltd	60,00,000	3.59%	13.79%				4,565,028	4,108,525	5,021,530	323,777	No
6	Orchid Chemicals & Pharmaceuticals Ltd.,	60,00,000	3.59%	13.79%				4,565,028	4,108,525	5,021,530	8,982,750	No
7	ABI showatch(India) Limited	7,50,000	0.45%	1.72%				570,628	513,566	627,691	1,475,735	No
8	Precot Meridian Limited	22,50,000	1.35%	5.17%				1,711,885	1,540,697	1,883,074	3,664,471	No
9	Sundaram Clayton Limited	37,50,000	2.24%	8.62%				2,853,142	2,567,828	3,138,456	6,572,969	No
10	MRF Ltd.,	37,50,000	2.24%	8.62%				2,853,142	2,567,828	3,138,456	5,132,496	No
11	TVS Srichakra Ltd.	22,50,000	1.35%	5.17%				1,711,885	1,540,697	1,883,074	4,429,173	No
TOTAL		4,35,00,000		100%	64,895,000		33,096,450	33,096,450	29,786,805	36,406,095	61,222,218	

**Note 1: As per para 7.6.3 and 7.6.7 of TNERC Order (R.A. No. 7 of 2019), it specifies that proportionality test for a SPV shall be calculated on 51% of electricity generated and not for consumption beyond 51%*

3.21. It is seen from the above table that all the captive users have not consumed power in proportion to their shareholding in the CGP. More specifically, the captive user, M/s. ChemplastSanmar Limited

holding 3.59% of the Equity Share Capital in the CGP has failed to consume even not less than 51% of energy generated on the lower limit side. As per TNERC's order in R.A.No. 7 of 2019:

"XXX

7.8.2 Where the minimum 26% ownership and not less than 51% consumption criteria are met, but one or more captive users do not meet the proportionality principle, such users who do not fulfil the proportionality criteria shall lose their captive status and other captive users who fulfil the proportionality criteria will retain their captive status provided the CGP complies with the twin criteria of 26% ownership and 51% consumption excluding users who lost their captive status.

XXX"

3.22. Hence, after excluding the above captive user as per clause 7.8.2 of TNERC's order in R.A.No. 7 of 2019 dated 28.01.2020, the remaining captive users hold only 22.43% of the paid-up Equity Share Capital of the company as detailed below:

FY 2019-20			
Prepared in view of clause 7.8.2 of Hon'ble TNERC's order in			
<u>Shareholding held by Captive Users after excluding users who lost their captive status on the lower limit</u>			
Sl. No	Name of Shareholder	No.of equity shares of	
		As per Share Certificate as on 31st March 2019	% of ownership through shares in Company / unit of CGP
1	Brakes India Private Limited	75,00,000	4.49%
2	Jagannath Textile Mills Ltd.,	52,50,000	3.14%
3	Lakshmi Mills Company Limited	52,50,000	3.14%
4	Harshini Textile Mills Ltd	7,50,000	0.45%
5	Orchid Chemicals & Pharmaceuticals Ltd.,	60,00,000	3.59%
6	ABI showatch(India) Limited	7,50,000	0.45%
7	Precot Meridian Limited	22,50,000	1.35%
8	Sundaram Clayton Limited	37,50,000	2.24%
9	MRF Ltd.,	37,50,000	2.24%
10	TVS Srichakra Ltd.	22,50,000	1.35%
TOTAL		3,75,00,000	22.43%

Hence, the generating plant of M/s. Sai Regency Power Corporation Limited has lost the 'ownership' criteria for FY 2019-20.

3.23. Therefore the Respondents were informed that since "Ownership" criteria have not been fulfilled, their plant has lost the captive status for Financial year 2019-20. Hence, having lost CGP status for 2019-20, the Captive users who are also the owners of the said plant to the extent of their 'ownership' holding, are liable to pay the Cross Subsidy Surcharge as detailed below as per Tariff Order in T.P.No.1 of 2017 dated.11.08.2017:

For FY 2019-2020

Total adjusted units in the Financial year 2019-2020= 61,222,219 units

Cross Subsidy Surcharge applicable for Industrial services =
Rs.1.67/unit

Total Cross Subsidy payable by Captive users FY 2019-20 =
Rs.10,22,41,106/-

3.24. As the conditions of the captive status is not fulfilled, the user's liability on CSS dues provisionally, to be remitted is arrived as Rs.10,22,41,106/- (Rupees Ten Crores Twenty Two Lakhs Fourty One Thousand One Hundred and Six only) for FY 2019-20. The user wise adjustment details along with the amount of Cross Subsidy Surcharge liability is detailed below:

No.	Name of the Captive User	Tariff	HTSC No.	EDC	Adjusted Units	CSS Rate Per unit (Rs.)	Provisional CSS to be Payable by the Captive
1	Brakes India Private Limited	IA	89094121067	Vellore	2,164,631	1.67	36,14,934
	Brakes India Private Limited	IA	89094121144	Vellore	4,333,638	1.67	72,37,175
	Brakes India Private Limited	IA	89094121235	Vellore	4,823,369	1.67	80,55,027
	Brakes India Private Limited	IA	99094061113	Chennai West	1,918,621	1.67	32,04,097
2	Chemplast Sanmar Ltd	IA	29094180128	Cuddalore	323,777	1.67	5,40,708
3	Harshini Textile Mills Ltd	IA	39094340199	Udumalpet	1,220,228	1.67	20,37,781
4	Jagannath Textile Mills Ltd.,	IA	39094320418	Coimbatore South	6,300,636	1.67	1,05,22,062
	Jagannath Textile Mills Ltd.,	IA	39094350392	Coimbatore Metro	1,165,993	1.67	19,47,208
5	Sri Rameshwar Textiles	IA	39094350139	Coimbatore Metro	645,256	1.67	10,77,578
6	Lakshmi Mills Company Limited	IA	39094380231	Palladam	4,552,833	1.67	76,03,231
	Lakshmi Mills Company Limited	IA	79094700002	Tuticorin	3,515,642	1.67	58,71,123
7	M/s.ABI showatech India Ltd.,	IA	89094121159	Vellore	1,475,735	1.67	24,64,478
8	MRF Ltd.,	IA	19094041030	Chennai North	1,577,422	1.67	26,34,295
	MRF Ltd.,	IA	89094121180	Vellore	3,555,074	1.67	59,36,974
9	Orchid Chemicals & Pharmaceuticals Ltd.,	IA	99094110562	Chengalpattu	8,982,750	1.67	1,50,01,192
10	Precot Meridian Ltd.,	IA	39094320593	Coimbatore South	3,664,471	1.67	61,19,667
11	Sundaram Clayton Limited	IA	89094210244	Krishnagiri	2,289,385	1.67	38,23,273
	Sundaram Clayton Limited	IA	99094061109	Chennai West	826,503	1.67	13,80,260
	Sundaram Clayton Limited	IA	99094061514	Chennai West	2,444,044	1.67	40,81,553
	Sundaram Clayton Limited	IA	99094110737	Chengalpattu	1,013,037	1.67	16,91,772
12	TVS Srichakra Ltd.	IA	59094520045	Madurai	2,947,078	1.67	49,21,620
	TVS Srichakra Ltd.	IA	59094520126	Madurai	1,482,095	1.67	24,75,099
TOTAL					61,222,219		10,22,41,106

3.25. The Show Cause notice has been issued to the Respondent wherein it has been stated that in view of the above, within 15 days from the date of receipt of this intimation on disqualification of the captive status, Respondent the captive generators/users shall inform/reply their concurrence to disqualification for FY 2019-20 & response thereto (or) their objection to such disqualification & consequential dues to be remitted. If no information/reply is received on or before 08.01.2021, it will be construed that Respondent have no reply to furnish & Respondent have accepted to pay the amount of Rs.10,22,41,106/- (Rupees Ten Crores Twenty Two Lakhs Forty One Thousand One Hundred and Six only) to TANGEDCO and further action as per R.A.No.7 of 2019 dated 28.01.2020 will be taken by TANGEDCO.

3.26. The Reply to Show Cause Notice dated 24.12.2020 has been furnished by the Resolution Professional on 08.01.2021. With regard to the Reply of the Respondent, the Petitioner/TANGEDCO stated as follows:

3.27. As regards averments contained in paras 2 and 3 of the Reply of the Respondent, it is respectfully submitted that the NCLT order shall have no impact on the present petition as the liability to pay the CSS is on the Captive users and not by the captive generator.

3.28. As regards averments contained in para 4 of the Reply of the Respondent, it is respectfully submitted that if the CGP is held by a person it is sufficient that the person consumes not less than 51% of the aggregate electricity generated in such plant. In case the plant is owned by a registered cooperative society then all the members together have to collectively consume 51% of the aggregate electricity generated. In case the CGP is owned by more than one user shall hold not less than 26% of the ownership of the plant in aggregate and shall consume not less than 51% of the electricity generated in proportion to their shares of the ownership of the plant within a variation not exceeding $\pm 10\%$. Moreover, the Respondent is SPV. As per the order of the Hon'ble APTEL in its Judgment in A.No.171 of 2008 in the matter of Kadodara Power Pvt Ltd Vs GERC, it was held that for SPV that proportionality test is applicable. Hence, the contention of the Respondent in para 4 is not acceptable one.

3.29. For the reasons stated, the Commission may declare M/s. Sai Regency Power Corporation Pvt. Limited, HT. SC. No. 059124780032, Ramnad EDC is not a Captive Generating Plant for the Financial Year 2019-20 and their captive users are liable to pay Cross Subsidy Surcharge for an amount of Rs.10,22,41,106/- for disqualification of Captive status.

4. Contentions of the Respondents:-

Per contra, the Respondents have contended as under:

PRELIMINARY COUNTER AFFIDVIT FILED ON BEHALF OF THE 9th
RESPONDENT MRF LIMITED FOR DISMISSAL OF MP 7/21

4.1. The present Petition has been filed by the Petitioner CFC/Deposits and Documentation, Tamil Nadu Generation and Distribution Corporation Ltd (TANGEDCO), seeking to declare that the Respondent No.1 Sai Regency is not a Captive Generating Plant for the Financial year 2019/20 and that their captive users are liable to pay Cross Subsidy Surcharge. The Respondent was a captive user of the 1st Respondent Company.

4.2. The present petition is liable to be dismissed in limine for 2 reasons, viz.,

a. The Petitioner has failed to adhere to the mandatory procedure that is required to be complied with prior to the filing of the proceedings as mandated by the Commission in RA 7 of 2019. Failure to adhere to such mandatory procedure ought to automatically result in the dismissal of the petition.

b. Since the Statute governing the proceedings against the 1st Respondent specifically bars the continuation of any

proceedings against it and the 1st respondent being the Captive Generating Plant, no proceedings for its status determination could have been proceeded against during the applicability of the Moratorium under the Insolvency and Bankruptcy Code.

4.3. While there is no merit in the present petition and the same is liable to be dismissed, it is stated at the outset that the present petition cannot be maintained and entertained at this stage. The present Preliminary Counter Affidavit is being filed on behalf of answering Respondent challenging the maintainability of the petition. The answering Respondent reserves its right to respond on the merits of the petition at a subsequent stage, if required.

4.4. A. FAILURE TO ADHERE TO MANDATE OF RA 7 of 2019 - Petition is premature.

4.4.1. The Commission issued the following directions in RA 7 of 2019 which is mandatorily required to be adhered to

"7.9.5 The licensee may conduct cross verification of data furnished with the available downloaded data from the meter terminals of captive generators and their captive users/billed data available. With respect to the documents of ownership/shareholding also, the Licensee may conduct cross verification from the data available in the Public domain of Registrar of Companies, Registrar of Firms etc.

7.9.6 Based on conditions stipulated in this procedure, the licensee shall verify the captive status of CGP and captive users, and shall intimate fulfilment of condition in regard to the captive status or otherwise to the CGPs/ captive users by 30th June. Where the conditions of captive status have not been fulfilled, the licensee shall intimate the user's liability on dues, provisionally, to be remitted on account of losing the captive status.

7.9.7 Within 15 days from the date of receipt of intimation on disqualification of the captive status, the captive generators/users shall inform

- i) their concurrence to such disqualification and their response thereto or*
- ii) their objection to such disqualification and consequential dues to be remitted.*

7.9.8 In the case of captive generators/users acceptance to the disqualifications as well as on the dues to be remitted, the licensee shall raise a fresh demand within 15 days of receipt of such concurrence.

7.9.9 In cases where the captive users/CGPs offer explanation/clarification and the Licensee finds the explanation satisfactory, the licensee may accordingly act on withdrawal of claims made. Where, the Licensee is not satisfied with the explanations offered by the CGP / captive users and is convinced that action has to be pursued for disqualification of the CGP or to raise the demand towards payment of cross subsidy surcharges, such cases shall be brought before the Commission for adjudication by filing necessary petition.

7.9.10 All cases of disputes on the status verification of CGPs conducted by the Licensee shall be referred to the Commission by the Licensee by filing a petition (Miscellaneous petition in view of the directions of the Hon'ble High Court of Madras in the W.A No.930 & 931 dt.9.10.2018) before the Commission for adjudication and till such time final orders are passed by the Commission no restraint proceedings or coercive action shall be taken. Upon filing of such Petition, the Commission shall decide the issue after giving opportunities to both parties, as soon as

possible, but not later than six months from the date of filing of such petition”.

4.4.2.A reading of the above order makes it clear that notice to and receiving objections from captive users has been made mandatory prior to the filing of any petition.

4.4.3. The Petitioner in paragraph 11 of the petition has contended that the order of the Adjudicating Authority, NCLT Chennai shall have no impact on the petition since the liability to pay Cross Subsidy Surcharge is on the captive users and not on the captive generator. Thus, the petitioner has clearly recognized that there are 2 aspects to a CGP determination, the first being the determination of the status of the Captive Generator and thereafter the imposition of Cross Subsidy Surcharge on the Captive Users in the event of non-compliance. Thus, there are 2 separate and distinct determinations to be made and the status requires examination of the responses of both the generator and captive user. It is for this reason that the captive users are mandatorily required to be heard. The Petitioner recognizes that the CGP has been incapacitated and this is evident from the stand in para 11. However, it is wholly incomprehensible as to how the Petitioner then seeks to proceed against the captive users by claiming that the moratorium will

not apply to them. When the determination of status cannot be done against the CGP, the question of imposition of Cross Subsidy cannot arise. Further, in any event, the same cannot be done without first complying with the mandatory procedure with regard to captive users. Therefore, the petition is liable to be dismissed.

4.4.4. The Petitioner had claimed that it has proceeded to assess cross subsidy surcharge since the 1st respondent did not provide information as required under the Regulation and the Petitioner proceeded to verify the CGP status of the 1st Respondent after reviewing the document submitted by the Generator at the time of captive wheeling approval and documents downloaded from the public domain. This type of action is clearly barred by Statute.

4.4.5. The liability is sought to be fastened on the captive users. The fundamental principle of natural justice demands an opportunity of hearing before arriving at such conclusion. The petitioner having not issued any show cause notice to the captive users including this Answering Respondent this petition is premature and liable to be dismissed.

4.5. MORATORIUM UNDER THE IBC REQUIRES THAT THE DETERMINATION OF CGP STATUS OF 1ST RESPONDENT BE STAYED AND

WITHOUT DETERMINATION OF CGP STATUS LEVY OF CROSS SUBSIDY DOES NOT ARISE

4.5.1. The petition is not maintainable in view of the moratorium declared by NCLT under Section 14 of the Insolvency and Bankruptcy Code.

4.5.2. The issue involved in the present application is the captive status of the 1st Respondent for the financial year 2019-20. The Hon'ble Adjudicating Authority, National Company Law Tribunal, Chennai, in an application filed under Section 7 of the Insolvency and Bankruptcy Code (IBC), in IBA 92/2019 had admitted the application and has passed the consequential orders of moratorium as set out in Section 14 of the Insolvency and Bankruptcy Code. The Hon'ble Adjudicating Authority in the said order has held as under:

"i. That Moratorium is hereby declared prohibiting all of the following actions, namely:

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property

including any action under the Securitization on Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

ii. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iii. That the provisions of sub section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

iv. That the order of moratorium shall have effect from 27-03-2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub section (1) of section 31 of IBC or passes an order for liquidation of the debtor u/s 33 of IBC as the case may be.

v. That the public announcement of the corporation insolvency resolution process shall be made immediately as specified under section 13 of IBC.

vi. That this Bench hereby appoints Mr. G. Ramachandran, Reg. No. LIBBVIPA -002/IP-N00167/2017-2018/10437. Residing at FIO, Syndicate Residency, No.3, Dr. Thomas First Street, Off South Boag, Road, T. Nagar, Chennai 600 017 as interim resolution professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations / Circulars Directions issued in this regard.

4.6. In view of the moratorium granted by the Hon'ble NCLT Chennai, no proceedings can be initiated or continued against the 1st Respondent and consequently, the relief prayed for by the Petitioner cannot be granted since without determining CGP status of the Captive Generating Plant, i.e., the 1st Respondent, the levy of Cross Subsidy on Captive Users cannot be determined. The question of payment of alleged Cross Subsidy Surcharge on the captive users will arise only when the Commission declares that the 1st Respondent is not a captive generating plant and that determination cannot be done.

5. Preliminary objection on behalf of the Respondent No.1- M/s. Sai Regency Power Corporation Private Ltd.:-

5.1. The present Petition has been filed by the Petitioner - Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO), seeking to declare that the Respondent No.1 – M/s.Sai Regency Power Corporation Private Ltd. (hereinafter referred to as "answering Respondent"), is not a Captive Generating Plant for the Financial Year 2019-20, and that their captive users are liable to pay Cross Subsidy Surcharge.

5.2. While there is no merit in the present petition and the same is liable to be dismissed, it is stated at the outset that the present petition cannot be maintained and entertained at this stage. The present Preliminary Objection is being filed on behalf of answering Respondent Limited challenging the maintainability of the

Petition. The answering Respondent reserves its right to respond on the merits of the Petition, at a subsequent stage if required.

5.3. Save as expressly admitted in the present Reply, nothing in the Petition may be deemed to be admitted by the answering Respondent. All contentions and averments in raised by TNAGEDCO in the present Petition are stated to be wrong and are specifically denied.

5.4. The issue in the present case is the captive status of the Respondent No.1 for the financial year 2019-20.

5.5. The Respondent No.1 is presently undergoing a corporate insolvency resolution process under the provision of the Insolvency and Bankruptcy Code, 2016 ("the Code"), in Petition No: IBA/92/2019. The Hon'ble National Company Law Tribunal, Chennai vide order dated 27.03.2019 under Section 7 of the Code ("Admission Order"), the Hon'ble NCLT Chennai, has admitted the petition, initiated corporate insolvency resolution process against the answering Respondent and declared a Moratorium in terms of Section 13 and 14 of the Code. In the Admission Order, the Hon'ble NCL T has, inter-alia, held as under:

- I. That Moratorium is hereby declared prohibiting all of the following actions, namely,
 - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from 27.03.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of the debtor u/s 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints Mr.G. Ramachandran, Reg. No: LIBBVIPA-002/1P-N00167/2017-2018/10437, Residing at F10, Syndicate Residency, No.3, Dr. Thomas First Street, Off South Boag, Road, T. Nagar, Chennai-600017 as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP /RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

5.6. The above moratorium declared is in subsistence till date and the institution or continuation of any proceedings against the answering Respondent is prohibited. In the circumstances, the present petition seeking to institute the proceedings against the answering Respondent is not maintainable and the present petition is liable to be dismissed as such. The present Petition being a proceeding against the answering Respondent company, the same would be covered by the moratorium in view of the Code read with the Admission Order dated 27.03.2019 of the Hon'ble NCL T, Chennai.

5.7. In light of the above, it is humbly prayed that the Commission may dismiss the present Petition being against to the moratorium declared by the Hon'bleNCLT Chennai in its order dated 27.03.2019, which is currently in effect.

6. Reply filed by the Petitioner to the Preliminary Objections filed by the 1st Respondent:-

6.1. The Petitioner herein has filed the present MP No.7 of2021 to declare that M/s.Sai Regency Power Corporation Private Limited HTSC No. HT.SC.No. 059124780032 is not a Captive Generating Plant for the Financial Y car 2019-20 and their captive users are liable to pay Cross Subsidy Surcharge for an amount of Rs.10, 22, 41,1061- for disqualification of Captive status.

6.2. The Petitioner herein has issued a Shown Cause Notice to the Respondents herein dated 24.12.2020. The 1stRespondent has sent a Reply dated 08.01.2021. I humbly submit that thereafter, the Petitioner herein has filed

the present MP No. 7 of 2021 on 25.01.2021 before the Commission, as stated above.

6.3. The First Respondent herein has filed Preliminary Objection by stating that the First respondent, namely, M/s. Sai Regency Power Corporation Private Limited is undergoing Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code, 2016 in IBA No. 92 of [2019.

6.4. In the Preliminary Objection dated 08.03.2021 filed by the First Respondent, it has been stated that the present proceedings are not maintainable due to the subsistence of the order of moratorium declared by the Hon'ble NCLT, Chennai in IBA No. 92 of 2019. The present proceedings are maintainable and there is no bar under Section 14 of the Insolvency and Bankruptcy Code, 2016. Section 14(1) of the Code reads as follows:

"14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. "

6.5. The Order dated 28.01.2020 passed in R.A. No.7 of 2019, the Commission has to appoint the Petitioner herein to conduct the verification of CGP status based on the procedure mentioned in Paragraph No. 7 of the Order. Accordingly, for the purpose of verification of CGP Status, the Petitioner herein, based on and in furtherance of the Order dated 28.01.2020 passed in R.A. No. 7 of 2019 has issued the Show Cause Notice dated 24.12.2020 to the Respondents. The 151 Respondent has sent a Reply dated 08.01.2021.

6.6. The Preliminary objection is not tenable both in law and on facts. The present MP has been filed for a declaration that the First Respondent herein is not a Captive Generating Plant for the Financial Year 2019-20 and their captive users are liable to pay Cross Subsidy Surcharge for an amount of Rs.10,22,41,106/- for disqualification of Captive status.

6.7. The pendency of the proceedings as against the First Respondent herein before the Hon'ble NCLT, Chennai in IBAI92/20 19 has got no connection or relevance to the present proceedings for verification of CGP Verification based on the Order dated 28.01.2020 passed in R.A. No.7 of 2019 passed by the Commission read with Rule 3 of the Electricity Rules, 2005. The liability for payment of Cross Subsidy Surcharge is cast on the First Respondent as well as the captive users, namely Respondents 2 to 13. The Respondents 2 to 13, except

12 have neither filed a Reply to the Show Cause Notice dated 24.12.2020 nor have they filed any Counter in the present proceedings.

6.8. The proceedings for verification of CGP Status and the present MP, do not fall within the meaning of institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority, as provided under Section 14(1) (a) of the IB Code, 2016.

6.9. The process of Verification of Status, issuance of Show Cause Notice dated 24.12.2020 and filing of the present Petition are all in accordance with the Order dated 28.01.2020 passed in R.A. No. 7 of 2019 passed by the Commission read with Rule 3 of the Electricity Rules, 2005. It is humbly submitted that there is no bar for determining the Cross Subsidy Surcharge (CSS) and in any event, the Respondents 1 to 13, claiming under the First Respondent as 'captive users' are liable to pay the Cross Subsidy Surcharge. In view of the above, the Preliminary Objection raised by the First Respondent is not sustainable in law and it is liable to be rejected.

6.10. The Commission may dismiss the Preliminary Objection and allow the MP as prayed for.

7. Rejoinder on behalf of the Respondent 1 to the reply filed by the Petitioner on the Preliminary objections to the present petition:-

7.1. The present petition has been filed by the Petitioner, inter-alia, seeking directions against the Respondent No.1- Sai Regency Power Corporation Private Limited. (hereinafter referred to as "answering Respondent") in relation to its captive status for the financial year 2019-20 and for consequential action to be taken against the answering Respondent and its captive consumers.

7.2. In response to the above petition, the answering Respondent had taken the preliminary objection on the continuation of the present petition in view of the moratorium that has been imposed by the Hon'ble NCLT, Chennai under section 14 of the Insolvency and Bankruptcy Code, 2016, which was granted by order dated 27/03/2019.

7.3. While responding to the above, the petitioner has taken on erroneous and legally untenable position that the moratorium granted by the Hon'ble NCLT does not extend to the present petition filed before the Commission. The legal contentions ought to be raised by the petitioner is that the present Petition does not fall within the meaning of "institution of suits or continuation of pending suits or proceedings against the corporate debtor" as provided for in section 14 of the IBC.

7.4. The present petition clearly falls within the above provisions of suits or proceedings against the corporate debtor and is therefore hit by the statutory bar in section 14 of the IBC. The term "proceedings" is wide enough to include all

proceedings and not just legal proceedings. In other words, even proceedings before a statutory authority are hit by the moratorium under Section 14 of the Code. By Judgment dated 1st March, 2021 the Hon'ble Supreme Court in P. Mohanraj & Ors. v. M/s. Shah Brothers Ispat Pvt. Ltd. has interpreted the term "proceeding" to be wide enough to include all proceedings against the Corporate Debtor (i.e. Sai Regency in the present case) before any authority or court of law. Relevant part of the said Judgment is extracted hereunder for ease of reference:

"14. We now come to the language of Section 14(1)(a). It will be noticed that the expression "or" occurs twice in the first part of Section 14(1)(a) - first, between the expressions "institution of suits" and "continuation of pending suits" and second, between the expressions "continuation of pending suits" and "proceedings against the corporate debtor ... ". The sweep of the provision is very wide indeed as it includes institution, continuation, judgment and execution of suits and proceedings. It is important to note that an award of an arbitration panel or an order of an authority is also included. This being the case, it would be incongruous to hold that the expression "the institution of suits or continuation of pending suits" must be read disjunctively as otherwise, the institution of arbitral proceedings and proceedings before authorities cannot be subsumed within the expression institution of "suits" which are proceedings in civil courts instituted by a plaint (see Section 26 of the Code of Civil Procedure, 1908). Therefore, it is clear that the expression "institution of suits or continuation of pending suits" is to be read as one category and the disjunctive "or" before the word "proceedings" would make it clear that proceedings against the corporate debtor would be a separate category. What throws light on the width of the expression "proceedings" is the expression "any judgment, decree or order" and "any court of law, tribunal, arbitration panel or other authority", Since criminal proceedings under the Code of Criminal Procedure, 1973 ['CrPC'] are conducted before the courts mentioned in Section 6, CrPC, it is clear that a Section 138 proceeding being conducted before a Magistrate would certainly be

aproceeding in a court of law in respect of a transaction which relates to a debt owed by the corporate debtor.....

7.5. Further, in *Alchemist Asset Reconstruction Company Ltd v. Hotel Gaudavan Private Limited &Ors*, (2018) 16 SCC 94, the Hon'ble Supreme Court has inter alia held as under:-

"4. The mandate of the new Insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors.

5. This being the case, we are surprised that an arbitration proceeding has been purported to be started after the imposition of the said moratorium and appeals under Section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated 6-7-2017 and further state that the effect of Section 14(1)(a) is that the arbitration that has been instituted after the aforesaid moratorium is nonest in law."

7.6. It may be relevant to mention that even the Hon'ble Appellate Tribunal had adjourned proceedings which were filed against companies which were subject matter of proceedings under the IBC and where moratorium was in effect.

7.7 In the present case, the captive status is to be determined that of the answering respondent. Further, it is the case of the Petitioner that it is the answering Respondent and the consumers who are liable to compensate the Petitioner for the Cross Subsidy Surcharge. The various allegations in the petition are against the answering Respondent. The Commission may kindly take note of the title of the Petition which reads as under:

III IN THE MATTER OF:

The Tamil Nadu Electricity Regulatory Commission may be pleased to declare M/s.Sai Regency Power Corporation Pvt. Limited, HT. SC:No. 059124780032, Ramnad EDC is not a Captive Generating Plant for the Financial Year 2019-20 and their captive users are liable to pay Cross Subsidy Surcharge for an amount of Rs.10,22,41,1061- for disqualification of Captive status."

7.8. In the circumstances mentioned above, it is grossly misconceived on the part of the Petitioner to contend that the present petition does not fall within the scope of the proceedings within the meaning of section 14 of the IBC and therefore would not be hit by the moratorium that has been granted by the Hon'ble NCLT.

7.9. In the facts and circumstances mentioned above, the answering Respondent reiterates the prayer made in the preliminary objection to the specific present petition as being against the moratorium declared by the Hon'ble NCLT, Chennai in its order dated 27/03/2019 which is currently in effect. Continuation of the present proceedings shall amount to a violation of settled law and shall amount to gross miscarriage of justice.

8.0. COMMON MEMO FILED ON BEHALF OF RESPONDENT NOS. 2 AND 4 TO 13

8.1. The instant memo is being filed on behalf of the 2nd and 4th - 13th Respondents pursuant to directions issued by the Commission vide

Daily Order dated 15.06.2021. The Commission had directed the Respondents in the above petition to file a memo on the applicability of the judgment of the Hon'ble APTEL in Appeal No. 131 of 2020, to individual cases pertaining to Captive Generating Plants (CGP).

8.2. The Hon'ble Appellate Tribunal for Electricity (APTEL) passed its judgment (Judgment) in Appeal No.131 of 2020: Tamil Nadu Power Producers Association vs. Tamil Nadu Electricity Regulatory Commission. APTEL vide the Judgment (uploaded on the website of APTEL on 11.06.2021), which has settled various issues pertaining to verification of captive status of a Captive Generation Plant (CGP) under the Electricity Rules, 2005 (Rules).

8.3. For captive users to enjoy their captive status and the allied benefits, twin conditions have to be met in terms of Rule 3(1)(a)(i) and (ii) of the Rules:

- "a. captive users to hold 26% equity shares in the financial year; and*
- b. captive users ought to have consumed at least 51% of the aggregate electricity generated".*

8.3.1. Additionally, an Association of Persons (AOP) in terms of the second proviso to Rule 3(1)(a) is required to meet the criterion of proportionate consumption, i.e., such captive user(s) shall consume

not less than 51% percent of the electricity generated in proportion to their shares in ownership of the power plant.

8.4. The Judgment was passed in an Appeal against Order dated 28-01-2020 (Impugned Order) passed by the Tamil Nadu Electricity Regulatory Commission (TNERC) in R.A. No.7 of 2019, wherein the TNERC had formulated a fresh procedure for verification of status of captive user(s) and CGPs located in the State of Tamil Nadu.

8.5. The Appellant was aggrieved by various directions passed by TNERC in the Impugned Order, including the requirement imposed on the CGPs formed as SPV to consume power in proportion to their shareholding in terms of the second proviso of Rule 3(1)(a)(i) of the Rules. APTEL vide its Judgment has set aside the Impugned Order to the extent detailed hereunder:

A. Prospective Operation of directions in RA 7 of 2019

a. The Hon'ble APTEL further noted that there cannot be any retrospective application of procedure formulated under the Impugned Order. For the past years TANGEDCO can verify data for the purpose of verification of CGP status on the basis of data already furnished by CGP/ captive user(s) while availing open access. Thus, it is clear that the directions of RA 7 of 2019 which were issued on 28.1.2020 can

have only prospective operation. This would essentially mean that they can be applied only from the first full year after the order, i.e., from 1.4.2020 to 31.3.2021.

b. Therefore, the documents, as called for from Format I to Format V-B, demanded for CGP verification for the past 6 years cannot be done. Such Formats will be made applicable from the year 2020-21 onwards, in view of the fact that the order of the Commission was made known to the stakeholders only on 28.01.2020, any verification of CGP status for the years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20 (6 years), can be verified by the TANGEDCO for the purpose of determination of captive plant status on the basis of the data already furnished by CGP/Captive users, while availing the open access. Therefore, the formatted data as demanded through Format I to Format V-B, cannot be insisted for the above period of 6 years.

c. The following extracts from the judgment clearly set out the position

"15.6 Another aspect related to issuance of show cause notices, as already recorded above, needs a mention in the present judgement. The Respondent No. 2 has already submitted that it has issued such notices to many captive users and CGPs in the State of Tamil Nadu since the year 2014 till 2017, as also in the year 2020. In this regard, we are constrained to observe that the Respondents are endeavouring to reopen and verify the already

closed and concluded transactions of availing open access for captive purposes. For such concluded transactions, the documents have already been submitted with the Respondents and on the basis of the said documents, the Respondents permitted open access for wheeling of captive power.

15.8We have examined the provisions of the Electricity Act, 2003 and it is observed that no provision of law is enacted therein which permits retrospectivity. Accordingly, we set-aside the directions contained in Paras 6.2.5. & 7.2.4, and hold that there cannot be retrospective application of the procedure formulated under the impugned order for verification of status of CGPs and captive users in the State of Tamil Nadu. We however clarify that for the past years, the Respondent No.2 can verify data for the purpose of verification of captive generating plant status in the State of Tamil Nadu, on the basis of the data already furnished by CGP/Captive User(s) while availing open access.

B. Distribution Company (Discom) cannot be the adjudicating authority for verification of captive status:

APTEL has held that the jurisdiction to verify the captive status of a CGP lies solely with the State Electricity Regulatory Commission.

C. SPVs cannot be equated as AOPs:

The Hon'ble APTEL, pursuant to analysing Rule 3 of the Rules as well as judgments passed by the Supreme Court regarding interpretation of proviso as exception to the general rule, held that SPVs cannot be equated with AOPs under Rule 3 of the Rules.

The Hon'ble APTEL has held the second proviso to Rule 3(1)(a) is a stand- alone provision and as such does not relate to Rule 3(1)(b).

Therefore, the requirement of proportionate consumption is only applicable to AOPs and not SPVs. Pertinently, APTEL in differentiating between SPVs and AOPs has held that the judgment dated 22.09.2009 previously passed by APTEL in Appeal No. 171 of 2008: Kadodara Power Pvt. Ltd. vs. Gujarat Electricity Regulatory Commission & Ors. & the batch (Kadodara Judgment) to the extent it equates an SPV and an AOP is 'per incuriam'

D. Captive users are only required to meet the minimum requirements under Rule 3:

The APTEL held that in terms of previous judgments passed by APTEL it is already established that the requirement of 26% shareholding and 51% captive consumption are the minimum requirements to be fulfilled by a set of captive users, and once the same is done, the rest of the captive users not fulfilling the above conditions will have no impact on the overall captive structure. The relevant portion that determines this issue is extracted-:

"14.7 Hence, we hold that the directions passed in Paras 6.6.3 and 7.8.2 have been done so in disregard of Rule 3 of the Rules and 'our judgments in the aforesaid appeals. Thus, these directions cannot be sustained under law and are hereby set-aside. We also hold that there is no requirement of payment of CSS by any defaulting captive users, if the rest of the captive users in a CGP fulfil the minimum requirements of 26%

shareholding and 51 % of consumption in terms of Rule 3 of the Rules”

Therefore, the entire petition as filed, which is in direct contrast to the above position and is liable to be dismissed on this ground alone since it seeks to apply a different and contrary criteria which is specifically set aside.

E. Weighted average shareholding method cannot be made applicable:

The Hon'ble APTEL refused to accept the contention for using weighted average shareholding method in case of varying shareholding pattern through the year. It noted that it is impossible for a CGP to predict the varying shareholding in a given year due to exiting captive users and therefore, the verification of minimum shareholding along with minimum consumption is to be done annually at the end of the financial year only.

The Hon'ble APTEL also held that changes in the shareholding pattern of captive users, need not be intimated to the Licensee anymore and set aside Para 7.6.9 of the order of the Commission issued in R.A. No.7 of 2019 dated 28.01.2020.

F. The documents to be provided for availing open access cannot be linked to Wheeling/ Open Access with captive verification:

The Hon'ble APTEL has held that the verification of shareholding criterion under Rule 3 cannot be made mandatory pre-condition for grant of open access. APTEL further noted that the verification of captive status regarding both shareholding and consumption criterion, can only be done annually at the end of the financial year. The Hon'ble APTEL upheld that for the purpose of granting open access for captive purpose, the documents mentioned at Para 11.3 of the Judgement shall suffice. These documents are as under:

- i. Open Access application as per the format given in aforesaid Regulation, 2014 with list of captive users;*
- ii. Certificate from a Chartered Accountant or Practicing company secretary providing details of the ownership of the CGP with shareholding details as on the date of the application;*
- iii. Consent/NoC obtained from DISCOM (Electricity Distribution Circle (EDC)) where the CGP is located. (Consent/NoC needs to be issued within 3 days as per OA Regulation, 2014);*
- iv. Consent NOC obtained from DISCOM EDC where the captive users are located (for only new users);*
- v. An undertaking of not having entered into a Power Purchase Agreement (PPA) or any other bilateral agreement with more than one person for the same quantum of power for which open access is sought from the Captive user;*
- vi. Applicable Open Access application fee”.*

It is also reiterated that these documents, are within the framework of TNERC Grid Connectivity & Intra State Open Access Regulations, 2014 and also do not violate the provisions of Rule 3 of

the Electricity Rules, 2005. Therefore, all other documents insisted for grant of Open Access under the Order in R.A. No.7 of 2019 dated 28.01.2020, are now not necessary for submission before the TANGEDCO / SLDC, whenever Open Access approval is applied for.

G. TNERC cannot implement the draft amendment to the Rules:

It was held that the proposed amendment to the Rules in terms of which verification of ownership and consumption ought to be done for each corresponding period of change and not at the end of the year, cannot be made applicable by TNERC at this stage.

8.6. In view of the above Order of the Hon'ble APTEL, more specifically its rulings, the present petition filed by TANGEDCO being M.P. No. 7 of 2021 which seeks to retrospectively apply and impose conditions set out in the judgment is rendered infructuous and not maintainable and must be dismissed. The TANGEDCO may be directed to proceed strictly in accordance with the judgment of the Hon'ble APTEL and approach the Commission, for purposes of adjudication, such of those cases as it is permissible to do after proceeding strictly in the manner set out in the judgment since the entire exercise carried out by it culminating in the present petition is pursuant to and in accordance with the orders of

the TNERC in RA 7 of 2019 which stand substantially set aside with fresh directions issued.

8.7. In continuing the present petition, the TANGEDCO is effectively seeking for a relief from the TNERC to proceed on the basis of the judgment in R.A.7 of 2019 which has now merged with the judgment of the Hon'ble APTEL pursuant to the doctrine of merger and as such, the relief is impermissible of being considered or granted. Therefore, any petition can now be filed only in accordance with the Hon'ble APTEL's judgment.

9. Written Submission filed by the Petitioner:-

The petitioner has made the same averments as was made in the Petition for the present Written Submission also and hence it is not necessary to reproduce them.

10. Findings of the Commission:-

We have heard the submissions of learned Counsel appearing for the Petitioner and the Respondents. The Petitioner has filed this petition for passing an order to declare that the Respondent M/s. Sai Regency Power Corporation Pvt Limited, HT. SC. No. 059124780032, Ramnad EDC is not a Captive Generating Plant for the Financial Year 2019-20 and their captive users are liable to pay Cross Subsidy

Surcharge for an amount of Rs.10,22,41,106/- for disqualification of Captive status.

The contentions of the Petitioner in brief are as under:

10.1. The Generator M/s. Sai Regency Power Corporation Private Limited obtained captive wheeling approval for change in captive users during January 2019 by furnishing certificate of Chartered Accountant given by M/s. UmamaheswaraRao & Co, Hyderabad dated 11.01.2019 with the details of % of Equity Share capital held by captive users as detailed below:

No	Class of Equity shares	Number of equity shares	Value per Equity share (Rs.)	Amount of equity share capital (Rs.)	% of holding based on equity capital	Number of voting rights	% of holding based on voting rights
1	Captive users (Class A)	43,60,000	10	4,36,00,000	26.08%	43,60,000	26.08%
2	Others (Class B)	1,23,60,000	10	12,36,00,000	73.92%	1,23,60,000	73.92%
Total		1,67,20,000		16,72,00,000	100.00%	1,67,20,000	100.00%

Hence, it is seen from the above table, the captive users of M/s. Sai Regency Power Corporation Pvt. Ltd possess not less than 26% of the total paid-up Equity Share Capital in the Generating Plant and fulfils the ownership criteria.

10.2. As M/s. Sai Regency Power Corporation Private Limited consumes 94.34% of the annual generation, and also it is a Special Purpose Vehicle, the test of proportionality on total consumed units on 51% of the annual generation to be applied subject to outcome C.A.Nos.8527-8529 of 2009, C.A.Nos.1-2 of 2010, C.A.Nos.1693-1698 of 2010 and C.A. Nos. 12282 of 2016, Civil Appeal Diary No.22360 of 2021 and Civil Appeal Diary No.21493 of 2021.

10.3. All the captive users have not consumed power in proportion to their shareholding in the CGP. More specifically, the captive user, M/s. ChemplastSanmar Limited holding 3.59% of the Equity Share Capital in the CGP has failed to consume even not less than 51% of energy generated on the lower limit side. Hence, after excluding the above captive user, the remaining captive users hold only 22.43% of the paid-up Equity Share Capital of the company.

10.4. Since "Ownership" criteria have not been fulfilled, their plant has lost the captive status for Financial year 2019-20. Hence, having lost CGP status for 2019-20, the Captive users who are also the owners of the said plant to the extent of their 'ownership' holding, are liable to pay the Cross Subsidy Surcharge as detailed below as per Tariff Order in T.P.No.1 of 2017 dated.11.08.2017:

For FY 2019-2020

Total adjusted units in the Financial year 2019-2020= 61,222,219 units
Cross Subsidy Surcharge applicable for Industrial services =
Rs.1.67/unit

Total Cross Subsidy payable by Captive users FY 2019-20 =
Rs.10,22,41,106/-

Per contra, the contentions of the Respondent in brief are as under:

10.5. The Respondent - Sai Regency is undergoing Corporate Insolvency Resolution Programme (CIRP) under Insolvency and Bankruptcy Code, 2016 and have been under Moratorium since 27-03-2019. During Moratorium no case can be filed/continued against the Corporate Debtor i.e. Sai Regency under section 14 of the IBC, 2016.

10.6. In this connection, the Commission would like to refer to Rule 3 of the Electricity Rules, 2005, *inter alia*, which defines Special Purpose Vehicle as under:

"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".

10.7. Further, section 2(8) of the Electricity Act, 2003, defines Captive Generating Plant as under:

"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 co-operative society or association of persons or generating electricity primarily for use of members of such co-operative society or association."

10.8. Again, Section 2(28) of the Electricity Act, 2003, defines Generating Company as under:

"Generating Company" means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station".

10.9. On perusal of the Objects Clause in the Memorandum of Association (MOA) of the Company, the main object of the Company, *interalia*, is as under:

"To construct, setup, operate and manage captive power plant for generating electricity primarily for the use of members of the company (members being industrial & other consumers) as a Group Captive and supply and sale of such power in bulk or otherwise, to such user membersand other objects incidental or ancillary to the attainment of the main object....."

From the above, it can be concluded that the Respondent Company is an SPV only.

ORDER

The proportionality test is not applicable to the Special Purpose Vehicle as per Clause No.9.9.5.3 of the Commission's Order No. M.P.

No.24 of 2020 dated 07-12-2021 (Modified CGP Order as per APTEL's Directions), which are as under:

"9.9.5.3 In the case of SPV under Rule 3(1)(b), the captive user(s) shall hold in aggregate not less than 26% of the proportionate paid up equity share capital with voting rights of the units identified for captive use (i.e.t he proportionate of the Equity of the company related to the generating unit or units identified as the CGP) and shall consume not less than 51% of the aggregate electricity generated on annual basis from the identified units. The condition of consumption of 51% of aggregate generated electricity has to be met by the consumers of SPV collectively".

Hence, the percentage of holding based on voting rights is calculated as under:

No.	Class of Equity Shares	Number of Equity Shares	Value per Equity Share (Rs.)	Amount of Equity Share Capital (Rs.)	% of holding based on equity capital	Number of voting rights	% of holding based on voting rights
1.	Captive Users (Class A)	43,60,000	10	4,36,00,000	26.08%	43,60,000	26.08%

The Commission relied on the interpretation given in respect of "Ownership" criteria in the Judgement of Hon'ble Punjab and Haryana High Court in CWP No.12908 of 2016 dated 01-07-2016, which, *interalia*, states as under:

"5.....

Any recourse to monetary value of the shares in question is clearly not warranted and is contrary to the concept of "Ownership" of Companies as envisaged by the Explanation (1) (c) to Rule. So long as the captive consumers of the petitioner are collectively holding equity shares in the company with 26% voting rights in the company, then the test of 'ownership' is clearly met as per the Rules, irrespective of the value of the share. In other words, the determinative factor is thus not 26% of the equity value, but only 26% votingrights".

Since the Respondent fulfils the twin principles of CGP, it is not liable to pay the Cross Subsidy Surcharge as claimed by the Petitioner.

With these observations, the Petition of TANGEDCO is dismissed and the case is disposed of accordingly.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**