BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

HERC/Petition No. 44 of 2024
along with IA No. 4 of 2024

Date of Hearing	**:**	**25.09.2025**
Date of Order	**:**	**10.11.2025**

In the Matter of

Petition under Section 86 (1)(f) read with Section 9 of the Electricity Act, 2003 read with Rule 3 of the Electricity Rules and Regulation 22, 65-67 of the HERC (Conduct of Business) Regulations 2019 challenging the illegal and arbitrary Notices bearing No. Ch-605/13/SE/CBO/OA dated 21.06.2024 and bearing No.Ch-605/13/SE/CBO/OA dated 21.06.2024, issued by Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) to the petitioner No.1 & 2 respectively seeking recovery of Rs.68,03,220/- against alleged non-fulfilment of captive status of Piccadily Agro Industries Limited for the FY-2020-21 and consequent reliefs

Petitioner (s)
1. M/s. Piccadily Agro Industries Ltd.
2. M/s. Piccadily Hotels Pvt. Ltd

Respondents
1. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar
2. Haryana Vidyut Prasaran Nigam Ltd (HVPNL), Panchkula

Present on behalf of the Petitioner (s)
1. Mr. Vikas Mishra, Advocate
2. Shri Sanchit Gawri, Advocate
3. Mr. Gaurav Saini, Consultant
4. Mr. Ram Pal, Manager

Present on behalf of the Respondents
1. Ms. Sonia Madan, Advocate
2. Mr. Lovepreet Singh, Advocate

Quorum

Shri Nand Lal Sharma	**Chairman**
Shri Mukesh Garg	**Member**
Shri Shiv Kumar	**Member**

ORDER

Brief Background of the case

1. The present petition has been filed by M/s. Piccadily Agro Industries Ltd (petitioner no.1) and Piccadily Hotels Private Limited (petitioner no. 2) challenging the legality and validity of the Notices bearing No. Ch-605/13/SE/CBO/OA dated 21.06.2024 and bearing No.Ch-605/13/SE/CBO/OA dated 21.06.2024, (hereinafter referred to as "the 'impugned notices'") issued by the respondent to the petitioners wherein the

respondent no. 1 has alleged that the petitioner No.1 does not qualify the condition of captive status as per Rule 3(1)(a)(ii) of the Electricity Rules, 2005, in as much as the petitioner No.2 (Captive User) has consumed only 29,95,254 Units out of net injected power/generated power of 80,42,432 Units by the petitioner No.1 at its generating plant. In other words, the petitioner No.2 has only consumed 37.24% of the generated energy by the petitioner No.1 in the financial year 2020-21 and consequently, the petitioner No.2 is liable to restore the benefit of the sum of Rs.68,03,220/- taken from the respondent as captive user (hereinafter referred to as "impugned demand").

2. **Submissions of the petitioner (s):-**

The petitioner (s) have submitted as under:-

2.1 That the petitioner no.1 was incorporated in the year 1994 and is *inter-alia* engaged in the business of manufacturing and sale of malt spirits in India and also Ethanol, Extra Neutral Alcohol (ENA), CO2 and white crystal sugar. The petitioner No.1 has set up and installed, the followings, in one premises at Indri, District Karnal: -

i. Sugar mill for manufacturing white crystal sugar; and

ii. A distillery facility by the name 'Piccadily Distilleries' wherein it manufactures malt spirits, ethanol, Extra Neutral Alcohol (ENA), CO2;

iii. A renewable energy/ bagasse/biomass-based Co-generation Power Project of 17-Megawatt (MW) capacity i.e., four numbers. units of 6 MW, 5 MW, 3 MW and 3 MW (hereinafter referred to as the "Co-generation Power Plant") in the same manufacturing facility;

2.2 That that the power generated at the generating plant of the petitioner No.1 is also used/consumed by distillery unit and sugar unit in addition to the consumption by the petitioner No.2 at its hotel located at Manesar Gurugram. Furthermore, power is also consumed at the generating plant.

2.3 That the petitioner No.1 and the DISCOM had agreements for banking of power from 2015 till 2024. In this vein, it is relevant to state that following three agreements for banking of power were entered in respect of generating Units of the petitioner No.1's Co-Generation Plant:

i. Power Banking Agreement dated 23.01.2015 entered between the petitioner No.1 and Haryana Power Purchase Centre;

ii. Power Banking Agreement dated 19.01.2018 entered into between the petitioner No.1 and Haryana Power Purchase Centre;

iii. Tripartite Banking Power Agreement dated 24.01.2020 entered between the petitioner No.1; Uttar Haryana Bijli Vitran Nigam Limited and Haryana Vidyut Prasaran Nigam Ltd;

The above-mentioned agreements are collectively referred to as “Power Banking Agreements”

2.4 That under the Power Banking Agreements, the petitioner No.1 was entitled to bank its spare/unutilized generated power for the consumption/utilization for the hotel owned by the petitioner No. 2. One of the conditions for availing the benefit of banking was satisfaction of criteria laid down in Rule 3(1)(a)(ii) of the Electricity Rules, 2005 i.e. consumption of 51% of the generated power as captive use. It is an undisputed fact that the aforesaid power banking arrangement was in place for the FY-2020-21, in terms of the Tripartite Banking Power Agreement dated 24.01.2020.

2.5 That the petitioner No.1 on the basis of its captive consumptions including but not limited to consumption by its distillery unit, sugar unit and also consumption by petitioner No.2 clearly qualify to be a captive generating plant within the meaning of Section 2(8) of the Electricity Act read with Rule 3 of the Electricity Rules, 2005. In this vein, it is submitted that the petitioner No.1 qualified to be a captive generating plant within the meaning of the aforesaid provisions for the FY-2020-21 on the basis of its captive consumption detailed hereinafter. This fact was duly recognized and acknowledged by the respondent/DISCOM and accordingly, the petitioner No.2 utilized the power banked by the petitioner No.1 in the FY-2020-21. Consequently, no power from the grid was utilized or consumed by the petitioner No.2 and accordingly, the petitioner No.2 is not liable to any sum of money towards the consumption made by it in the FY-2020-21.

2.6 That to the shock and surprise of the petitioners, the respondent vide its letter dated 06.06.2022 issued to the petitioner No.2, inter-alia, alleged that the petitioner No.2 did not fulfil Rule 3(1)(a)(ii) of the Electricity Rules 2005 i.e. it consumed less than 51% of the aggregate electricity generated in the FY-2020-21. It was further alleged that since the petitioner No.2 did not fulfil the captive consumption therefore, as per Clause 3.8 of the relevant Banking Agreement, the petitioner No.2 was not entitled to any benefit of the banked power, and it is liable to pay applicable charges for consumption of power by it. In the said letter, it was alleged that a sum of Rs.68,03,220/-, is liable to be reversed/charged for the FY-2020-21. Along with the said letter a purported chart was enclosed wherein total consumption vis-a-vis the injected power by the petitioner No.1 was claimed to be 16.41%.

2.7 That the respondent sent another letter dated 16.09.2022, wherein it continued with the aforesaid alleged demand of Rs.68,03,220/- and allegation that the petitioner No.2, did not fulfil Rule 3(1)(a)(ii) of the Electricity Rules 2005 i.e. it consumed less than 51% of the aggregate electricity generated in the FY-2020-21. By way of the said letter, the

respondent sought certain information with regard to generation, consumption and export of power in relation to the 5MW generating Unit of the petitioner.

2.8 That the petitioner No.1 vide its letter dated 20.09.2022, provided the information sought in the aforesaid letter dated 16.09.2022. The said letter was issued without prejudice to any rights and contentions of the petitioner No.1. In the said letter, it was clearly stated that all units from the said 5MW Unit have been used for the purpose of in-house consumption by petitioner No.1 and also by the petitioner No.2 which is its sister concern and also one of the captive users.

2.9 That the petitioner No.1 also issued letters dated 27.10.2022 and 24.07.2023, wherein it was stated that the captive consumption in relation to the petitioner No.1 generating plant/generating units comes out to be 57.54% and therefore requirement of consumption more than 51% is fulfilled. At the said stage, the figures were given on the basis of the information available at that stage.

2.10 That in view of the aforesaid communications between the Parties herein, the respondent sought legal opinion with regard to fulfilment of Rule 3(1)(a)(ii) of the Electricity Rules 2005 in relation to consumption by the petitioner No.2. Notably, the said legal opinion received by the respondent clearly stated that the petitioner No.1 has used the electricity generated at its plant for its own use which can also be considered as captive consumption. It further stated that usage of generated units by the petitioners maybe considered as consumption for its own use. Notably, said legal opinion by the respondent was considered internally and in its noting the respondent stated that if in-house consumption at generating point is considered as captive use, then Rule 3(1)(a)(ii) of the Electricity Rules 2005 is fulfilled in relation to the petitioners. However, the respondent decided to file a Petition before this Hon'ble Commission seeking a clarification in this regard. The said opinion formed part of the petition filed by the respondent detailed hereinbelow.

2.11 That by way of the petition bearing No. HERC/Petition no .7 OF 2024, the respondent made the following prayers:

"In light of the submissions made hereinabove and in the interest of justice this Hon'ble Commission may be pleased to:

1. Pass appropriate directions/ issue necessary clarification with respect to the determination of captive status i.e.

a) Whether or not the in-house power consumption is liable to be considered for the purposes of evaluation of the captive status of the respondents; and

b) Whether the Auxiliary consumption needs to be excluded from the total generation for computation of Captive Consumption of the Plant.

2. Pass any other order(s) and or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case."

2.12 That in the said Petition, it was the specific case of the respondent that under Rule 3 of Electricity Rules or under Section 2(8), 2(15) and 9 of the Electricity Act there is no clarity with regard to the following: -

i. Own Consumption' of generated electricity/power by Generating Plant at its generating point ought to be considered as 'Own Use' and/or 'Captive Use' for computation of 'Captive Consumption' of a Generating Plant ;

ii. Generating plant is also an end user of the electricity generated therein;

iii. Auxiliary consumption by a generating unit ought to be excluded from the total generation of generated electricity/power for computation of 'Captive Consumption' of a Generating Plant;

2.13 That in the said Petition, the respondent itself provided three scenarios for seeking the aforesaid clarification.

2.14 That it was the specific case of the respondent that the petitioners qualify Rule 3(1)(a)(ii) of the Electricity Rules 2005 in terms of Case-3 (scenario-3 detailed above). Whereas, in terms of Case-1 & Case-2, i.e. scenario-1 & 2 detailed above, the petitioners do not qualify Rule 3(1)(a)(ii) of the Electricity Rules 2005.

2.15 That the 3 scenarios pleaded by the respondent in the aforementioned Petition are as under:

a) **Case-1 as per the respondent**: Taking into account of:

i. the total power injected by the 5 MW Generating Unit in grid by the petitioner No.1; and

ii. total drawl at petitioner No.2 facilities as 'Own Use/Captive Use'; and

iii. excluding 'Own Consumption' of generated electricity/power by petitioner No.1 at the generating point of 5 MW Generating Unit as 'Own Use/Captive Use'; and the percentage of "Captive Consumption" by the petitioner No.2 (Captive User) is merely 20.52% which is well below the minimum threshold of 51% of the aggregate electricity generated in the 5 MW generating Plant prescribed under Rule 3(1)(a)(ii) of Electricity Rules, 2005 (hereinafter referred to as "Electricity Rules"). Accordingly, the petitioner No.1 is in breach of Clause 3.8, read with Clause 7.2 (c) of the Banking Agreement and is liable to pay applicable charges to the tune of Rs.68,03,220/- for the FY 2020-21.

b) **Case 2 as per the respondent**: Without prejudice to Case 1, taking into account of:

i. total power generated by the petitioner No.1 with respect to its 5 MW Generating Unit after exclusion of 'transmission losses and distribution losses' and 'auxiliary consumption' (8.5% as per RE Regulations, 2021); and

ii. total drawl at petitioner No.2 facilities as 'Own Use/Captive Use'; and

iii. including 'Own Consumption' of generated electricity/power by petitioner No.1 at the generating point of 5 MW Generating Unit as 'Own Use/Captive Use'; and the percentage of "Captive Consumption" comes out to be 50.83% which is slightly below the minimum threshold of 51% of the aggregate electricity generated in the 5 MW generating Plant prescribed under Rule 3(1)(a)(ii) of Electricity Rules. Accordingly, the petitioner No.1 is in breach of Clause 3.8, read with Clause 7.2 (c) of the Banking Agreement and is liable to pay applicable charges to the tune of Rs.68,03,220/- for the FY 2021-22;

c) **Case 3 of the respondent**: Without prejudice to Case 1 & 2, taking into account of:

i. total power generated by the petitioner No.1 with respect to its 5 MW Generating Unit after exclusion of 'transmission losses and distribution losses'; and

ii. total drawl at petitioner No.2 facilities as 'Own Use/Captive Use' and

iii. including 'Own Consumption' of generated electricity/power by petitioner No.1 at the generating point of 5 MW Generating Unit as 'Own Use/Captive Use'; and the percentage of "Captive Consumption" comes out to be 52.52% which satisfies the minimum threshold of 51% of the aggregate electricity generated in the 5 MW generating Plant prescribed under Rule 3(1)(a)(ii) of Electricity Rules. As such, the petitioner no. 1 is not in breach of Clause 3.8, read with Clause 7.2(c) of the Banking Agreement and consequently there is no liability to pay any sum.

2.16 That the petitioners filed their detailed reply dated 12.04.2024, to the aforesaid Petition before this Hon'ble Commission. In the said reply, the petitioners specifically dealt with each of the aforesaid 3 scenarios and also highlighted the factual discrepancies in the computation provided by the respondent. The petitioner also highlighted the erroneous parameter assumed by the respondent for determination of captive status of the petitioners. The petitioners, without prejudice to any of its rights and contentions, clearly stated that merely on the strength of correct factual figures, they fulfill Rule 3(1)(a)(ii) of Electricity Rules in respect of scenario-2 and as well as scenario-3. The petitioners crave leave of this Hon'ble Commission to treat the contents of the aforementioned reply filed by the petitioners to HERC Petition No.7 of 2024, which are not repeated herein for the sake of brevity and prolixity.

2.17 That this Hon'ble Commission dismissed the Petition No. HERC/Petition No.7 of 2024, *in-limine* without getting into the merits of the case on 14.05.2024.

2.18 The relevant portion of the Order dated 14.05.2024, is extracted as under:

"9. In view of the above discussions, the Commission is of the considered view that Discoms have to act strictly in accordance with the relevant provisions of the Act/Rules and while doing so can be guided by the procedure/guidelines framed by the Ministry of Power/Central Electricity Authority. Accordingly, the Discoms may also review their decision of denial of captive status to respondents and while calculating energy drawl for the purposes of evaluation of the captive status of the respondent, also refer to the procedure for verification of captive status of generating plants issued by the Central Electricity Authority (CEA) on 01.11.2023. The Discoms, being not aggrieved by its own decision, does not have any locus-standi to seek clarification on the provisions of the Electricity Act, 2003 or Regulations framed under the powers vested by the Electricity Act. Rather than Discoms seeking clarification, the generator may, if still aggrieved with the decision/findings of the Discom, approach this Commission under the relevant provisions of the Electricity Act, 2003 and regulations of this Commission framed thereunder"

10.In terms of the above, the present petition is dismissed in limine, without going into the merits of the case. This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 14.05.2024"

2.19 That the respondent has issued the 'impugned notices' wherein the respondent has alleged that the petitioner No.1 does not qualify the condition of captive status as per Rule 3(1)(a)(ii) of the Electricity Rules, 2005, in as much as the petitioner No.2 (Captive User) has consumed only 29,95,254 Units out of net injected power/generated power of 80,42,432 Units by the petitioner No.1 at its generating plant. In other words, the petitioner No.2 has only consumed 37.24% of the generated energy by the petitioner No.1 in the financial year 2020-21 and consequently, the petitioner No.2 is liable to restore the benefit of the sum of Rs.68,03,220/- taken from the respondent as captive user (hereinafter referred to as "'impugned demand'"). The respondent has called upon the petitioners to deposit the aforesaid amount within a period of 15 days failing which it has threatened to recover the said amount along with interest @18% per annum from the date of said Notices from the bills of petitioner No.2.

2.20 That the respondent vide email dated 09.07.2024, shared the purported break-up of the demand of Rs. 68,03,220/- along with supporting documents claimed by it. The purported break-up provided by the respondent is incorrect and hence denied.

2.21 That the case of the respondent in the 'impugned notices' is that taking into account the following i.e.:

i. the total power injected by the 5 MW Generating Unit in grid by the petitioner No.1; and

ii. total drawl including real time drawl, drawl of banked energy, transmission as well as distribution losses as 'Own Use/Captive Use'; and

iii. excluding 'Own Consumption' of generated electricity/power by petitioner No.1 at the generating point of 5 MW Generating Unit as 'Own Use/Captive Use';

2.22 That the respondent has not even bothered to deal with any of the contentions raised by the petitioner in their replies dated 20.09.2022; 27.10.2022; 24.07.2023 and well as the detailed reply/written statement dated 12.04.2024 filed before this Hon'ble Commission.

Consumption relating to entire generating plant has to be considered for computation of captive use;

2.23 That the respondent while issuing the 'impugned notices' and the 'impugned demand' has premised the same on only one 5 MW Unit of the petitioner No.1 for qualifying the petitioner No.1 with regard to captive status under Rule 3(1)(a)(ii) of Electricity Rules. This entire premise is completely incorrect and misconceived.

2.24 That the respondent categorically admits that the petitioner No. 1 has a (i). "17 MW bagasse generating power plant with four units" and (ii). "such power plant is owned and operated as Captive Generating Plant". Despite such admitted position, the respondent has proceeded to presume the only 5 MW Generating Unit as a "Captive Generating Plant" within the meaning of Section 2(8) of the Electricity Act. As such, the entire premise of the respondent is contrary to its own case.

2.25 That Section 2(8) of the Electricity Act provides that a Captive Generating Plant means a "*power plant set up by any person to generate electricity primarily for his own use*". The expression used is "Power Plant" whereas the respondent has presumed one of the generating Units out of the 4 generating Units constituting the "Power Plant" of the petitioner No.1 as the entire "power plant" of the petitioner No.1 for the purposes of determination of Captive Status, under Section 2(8) of the Electricity Act read with Rule 3 of the Electricity Rules. Thus, it is clear that the respondent has devised its own definition for determination of Captive Status of the petitioner No.1's Co-generation Power Plant. As such, the entire case of the respondent is *ex-facie* contrary to the express provisions of Section 2(8) of the Electricity Act read with Rule 3 of Electricity Rules.

2.26 That the petitioner No.1's Power Plant satisfies the test of Captive Status laid down in Section 2(8) of the Electricity Act read with Rule 3 of Electricity Rules for the FY-20-21. In this vein, it is also relevant to submit that as under:

i. Total power/electricity generated from Co-generation Power Plant (only 3 Units were functional) 3,25,80,358 no of Units; (including auxiliary consumption and excluding transmission losses)

ii. Power/electricity consumed by the petitioner No.1's generating point (distillery Unit and sugar mill Unit) is no 2,52,78,067 (7,94,328+2,44,83,739) of Units;

iii. Power/electricity consumed by the petitioner No.2 (Hotel) Unit is 39,71,515 no of Units out of 80,96,619 no of Units exported/supplied by the petitioner No.1 to the respondent for the purposes of banking;

iv. Power/electricity supplied/exported by the petitioner No.1 to the respondent for the purpose of banking under the Banking Agreement is 52,76,741 no of Units;

v. As such cumulatively, the petitioner No.1 and petitioner No.2 had at least consumed 2,92,49,582 no. of Units against 3,25,80,358 no of Units generated at Co-generation Power Plant. In terms of percentage, the petitioner Nos.1 & 2 had cumulatively consumed 89.77% (approx.) of the aggregate electricity generated at the Co-Generation Power Plant of the petitioner No.1 which is much more than the prescribed threshold of 51% as provided under Rule 3(1)(a)(ii) of Electricity Rules.

vi. The aforesaid data is based on logbooks maintained by the petitioner No.1 at its plant and also based on the UI accounts provided by the HVPNL with respect to the petitioner Nos.1 & 2 which is further based on the data of ABT meters installed at 132 KV substation, Bhadson and 66 KV substation, Old Manaser Gurugram respectively.

A chart giving summary of power generation at Co-Generation Power Plant of the petitioner No.1 and consumption by 3 Units of petitioner No.1 and by petitioner No.2 for the FY-2020-21 along with the underlying document is annexed. The logbooks containing the above details are handwritten and are with the petitioner No.1. The petitioner No.1 reserves its right to produce the same as and when directed by this Hon'ble Commission and the same are not being filed along with the present Petition in view of the urgency in the matter.

2.27 That the use of expression "Captive user(s)" used in Rule 3(1)(a)(i) and its proviso as well as the expression "Captive users" in the Explanation-1 to Rule 3 (1) (a) of the Electricity Rules make it explicitly clear that there can always be more than one captive user and various forms of captive use. Accordingly, the aggregate of such Captive Use ought to be considered while computing Captive Status of a power plant.

2.28 That the expressions "primary for his own use" used in Section 2(8) of the Electricity Act are in no manner restricted or qualified to say that own consumption of power generated by generating plant at its generating point ought not to be considered as own use or captive use for computation of captive consumption of a Generating Plant. Reliance is placed on the judgment on the Hon'ble Supreme Court in "*Monnet Ispat & Energy Limited vs. UOI and Others"* reported in 2017 SCC OnLine SC 2190, the Hon'ble Supreme Court has held as under:

*"14. The vires of Rule 3(1)(a)(ii) have been put into question in the instant cases. The High Court has rightly upheld1 its validity. We find that the definition of generating plant, as provided under Section 2(8) of the Act of 2003, emphasizes that the generation of electricity should be primarily "**for his own use**". Similar is the expression used in fourth proviso to Sub-Section 2 of Section 38, and the fourth proviso to Sub-Section (2) of Section 42 of the Act of 2003 contains provision of no surcharge on **"his own use"** as contemplated therein. Thus, while exercising the power under Section 176 of the Act of 2003, it was open to specify how much minimum use should be made in order to classify a captive power plant, primarily for "his own use". Thus, the Rule cannot be said to be repugnant to, rather it carries the very intendment of, the Act and is quite reasonable*

18. In the light of what has been discussed by this Court in Global Energy2 (supra) when we examine definition of Generating Plant in section 2(8) of the Act it emphasizes setting up primarily for his own use or in case of cooperative society for use by its members. When we consider Rule 3(1)(a)(ii) of the Rules of 2005, it is clear that it provides not less than 51% of aggregate electricity generated in such plant determined on annual basis is consumed for captive use. The rule conforms to the requirement of section 2(8) that primarily electricity should be generated by captive generating plant for his own use/members as the case may be."

2.29 That a power plant will qualify to be a Captive Generating Power Plant wherein:

i. A "Captive User" owns 26% of the ownership of such plant; and

ii. where cumulatively 51% or more of the aggregate electricity generated in such power plant is consumed by

- such Captive User, and/or
- the generating plant itself, and/or
- other industrial units or factories of the person or entity setting up such power plant.

2.30 That the reliance is placed on the judgment of the Hon'ble Supreme Court in the matter titled "*Chhattisgarh State Power Distribution Company Ltd. vs. Chhattisgarh State*

Electricity Regulatory Commission and Another" reported in 2022 SCC OnLine SC 604 the Hon'ble Supreme Court has held as under:

"14. A combined reading of Section 9 and Clause (8) of Section 2 of the said Act would reveal that a person is entitled to construct, maintain or operate a captive generating plant. ***Such a plant should be primarily for his own use****. Clause (8) of Section 2 of the said Act would further show that it includes a power plant set up by any cooperative society or association of persons for generating electricity. The requirement is that it should be primarily for the use of the members of such co-operative society or association."*

"16.It is thus clear that a person, to get benefit under Section 9 of the said Act, could be an individual or a body corporate or association or body of individuals, whether incorporated or not. It could thus be seen that even an association of corporate bodies can establish a captive power plant. ***The only requirement would be that the said plant must be established primarily for their own use****. The fourth proviso to sub-section (2) of Section 42 of the said Act would also reveal that surcharge would 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."*

"17.Therefore, the question that would arise is as to ***whether the open access for transmitting electricity from SBPIL to SBMPL would be for own use or not****."*

"19. The provisions made in Rule 3 of the said Rules are clear. Sub-rule (1) of Rule 3 of the said Rules provides that no power plant shall qualify as a "Captive Generating Plant" under Section 9 read with Clause (8) of Section 2 of the said Act unless the conditions stated therein are fulfilled. ***The first requirement is that not less than 26% of the ownership is held by the captive user(s****). The* ***second requirement is that not less than 51% of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use****. ....."*

"20. Admittedly, SBMPL holds 27.6% equity shares in SBPIL. As such, the requirement of not less than 26% of shares is fulfilled by SBMPL. As already discussed hereinabove, even an association of corporate bodies can establish a power plant. Since SBMPL holds 27.6% of the ownership, the use of electricity by it would be for captive use under the provisions of the said Act. The other requirement would be that the ***consumption of SBIPL and SBMPL together should not be less than 51% of the power generated****. Admittedly,* ***the joint consumption by SBIPL and SBMPL is more than 51%****. As such, both the conditions as provided under Rule 3 of the said Rules are satisfied."*

2.31 That there is no requirement that "Captive User" holding 26% ownership of such power plant is required to consume minimum of 51% of the aggregate electricity generated for its own use. As such, the entire edifice of the respondent's case seeking clarification in respect of Rule 3 Electricity Rules is completely flawed.

2.32 That it is clear that 'Own Consumption' of generated electricity/power Units by Generating Plant at its generating point ought to be considered as 'Own Use' and/or 'Captive Use' for computation of 'Captive Consumption' of a Generating Plant.

<u>Auxiliary consumption by generating Unit is to be excluded from the total generation of the generated power for computing captive consumption:</u>

2.33 That from the 'impugned notices' and the case of the respondent set up therein, it is apparent that the respondent has not excluded the auxiliary consumption of the petitioner No.1's generating Unit from the total generation of generated power by the petitioner No.1. This exclusion is contrary to the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (hereinafter referred to as "RE Regulation"). Whereas, Regulation 2(1)(2), of the RE Regulation defines auxiliary energy consumption as under:

"Auxiliary energy consumption' or 'AUXe' in relation to a period in case of a generating station means the quantum of energy consumed by auxiliary equipment of the generating station, and transformer losses within the generating station, expressed as a percentage of gross energy generated at the generator terminal of the generating station during the period"

From the above said definition it is evident that:-

i) Auxiliary consumption is a quantum of energy consumed by auxiliary equipment of the generating station including boiler feed pumps, id fans, water pump, RO feed pump, dosing pump, RO pump, shoot blower etc,

ii) Auxiliary consumption is a consumption of energy and the same requires to be excluded in view of being already consumed while computing any form of net output of any further consumption of power.

iii) As per Regulation 42 of RE Regulation, 8.5% of the auxiliary energy consumed is excluded while determining the tariff for a Co-Generation Power Plant.

iv) As per Regulation 3 of RE Regulation, the auxiliary consumption in a Co-Generation Power Plant is excluded from the gross power output to compute the net power output.

Computation of percentage of captive consumption in the 'impugned notices' are incorrect, baseless, misconceived and contrary to provisions of law.

2.34 That in the 'impugned notices' the respondent has considered only the total power injected by the 5 MW Generating Unit by the petitioner No.1 and the total drawl at petitioner No. 2 facility alongwith transmission and distribution losses as own use/captive use. Upon such consideration the respondent has concluded that the Captive Use of the total energy generated is 37.24% and consequently, it has been alleged that the petitioner No.1 has failed to comply with Rule 3(1)(a)(ii) of the Electricity Rules.

2.35 That the consideration of Power Generation limited to 5 MW Generating Unit and limited consideration of consumption of power by the petitioner No.2 at its facility is contrary to the express provisions of Section 2(8) of the Electricity Act read with Rule 3(1) of the Electricity Rules.

2.36 That the exclusion of own consumption of power generated by the petitioner No.1 at its generating point of 5 MW generating Unit from the preview of Captive Use/Own Use is totally incorrect and misconceived besides being contrary to the express provisions of Section 2(8) of the Electricity Act read with Rule 3(1) of the Electricity Rules.

2.37 That the respondent itself in its erstwhile Petition before this Hon'ble Commission (HERC Petition No.7 of 2024) had considered the total generation of power by the petitioner No.1 in Senario-2 & 3 as opposed to power injected by the petitioner No.1. Even in the note sheet filed along with the erstwhile Petition, the respondent admits that the electricity generated by the petitioner No.1 is required to be considered while computing the captive status. As such, the purported computation in the 'impugned notices' is contrary to respondent's own stand before this Hon'ble Commission.

2.38 That on a bare perusal of the note sheet filed along with the erstwhile Petition and the clarification sought in the said Petition, it is clear that as on the date of the said Petition, the respondent had some confusion with regard to *(i) inclusion of in-house power consumption while computing captive status of the petitioner; and (ii) exclusion of auxiliary consumption from the total generation of power.* As such, there was no occasion for the respondent to consider total injected power by the petitioner No.1 as opposed to total generated power while computing the captive status.

Consideration of draft procedure of verification of captive status of generating plant, issued by CEA on 01.11.2023, is misconceived

2.39 That the respondent has considered draft procedure of verification of captive status of generating plant, issued by CEA on 01.11.2023. It is clear that the said Procedure is still merely a draft and, in any case, it is prospective in nature being issued on

01.11.2023, whereas the issue in hand relates to a period 2020-21. As such, the said draft procedure could not have been blindly applied/considered by the respondent while issuing the 'impugned notices'.

2.40 That in any case, it is not clear what parameter of the aforesaid draft procedure has been considered while issuing the 'impugned notices' and raising the 'impugned demand'.

2.41 That the Order dated 14.05.2024, passed by this Hon'ble Commission merely observed that the respondent can seek guidance from the aforesaid draft procedure while determining the captive consumption of the petitioners. As such, the respondent was not required to blindly apply/consider the same while issuing the 'impugned notices'. Without prejudice to the foregoing, it is clear that the respondent has not applied its mind while considering the said draft procedure in as much as it ignores the parameter of "total energy generated" and whimsically applies alleged parameter of "total energy generated".

2.42 That the following prayers have been made:-

a) Set aside the Impugned Notice bearing No. Ch-605/13/SE/CBO/OA dated 21.06.2024 and bearing No. Ch-605/13/SE/CBO/OA dated 21.06.2024, issued by the respondent on the petitioner No.1 & 2 respectively containing the 'impugned demand' of Rs.68,03,220/- from the petitioners;

b) Declare that the petitioners qualify the condition laid down in Rule 3(a)(ii) of the Electricity Rules, 2005, for the FY-2020-21 in respect of its 17 MW Co-generation based power, at Indri, Karnal;

c) Permanently restrain the respondent from raising the 'impugned demand' of Rs.68,03,220/- or any part thereof or any sum from the petitioners on the ground of alleged non-fulfilment of Rule 3(a)(ii) of the Electricity Rules, 2005, for the FY-2020-21 by the petitioners in respect of its 17 MW Co-generation based power, at Indri, Karnal;

d) Pass such other or further orders as the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

Interim application for grant of stay filed by the Petitioner (s) (IA No. 4 of 2024)

2.43 That in view of the threat of recovery of the 'impugned demand' advanced by the respondent in the Impugned Notice, it is imperative that this Hon'ble Commission **(**i) stays the effect and operation of the 'impugned notices'; (ii) restrains the respondent from seeking recovery of the 'impugned demand', in any manner whatsoever, during the pendency of the present petition.

2.44 For the reasons stated herein above including the grounds urged, it is submitted that the petitioners have a strong prima facie case in their favour, balance of convenience lies in their favor and irreparable harm and injury will be caused to the petitioners if the prayers sought are not granted to the petitioners.

2.45 That the following prayers have been made: -

a) Pass an *ex-parte ad-interim* order staying the effect and operation of the Impugned Notice bearing No. Ch-605/13/SE/CBO/OA dated 21.06.2024 and bearing No. Ch-605/13/SE/CBO/OA dated 21.06.2024, issued by the respondent to the petitioner No.1 & 2 respectively containing the 'impugned demand' of Rs.68,03,220/- to be recovered from the petitioners; and

b) Pass an *ex-parte ad-interim* order restrain the respondent from seeking recovery of the 'impugned demand' of Rs.68,03,220/-, in any manner whatsoever, during the pendency of the present petition;

c) Pass such other or further orders as the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

Proceedings in the Case

3. The case was initially heard on 04.09.2024. Wherein, Mr. Vikas Mishra, the learned counsel for the petitioner (s), referring to IA No. 4 of 2024, filed in the matter, sought an interim stay on the recovery proceedings of impugned demand, till the decision of this case. Upon hearing the parties, the directed the respondent to file its reply within four weeks from the date of this order with an advance copy to the petitioner (s). The Commission further directed that no coercive action shall be taken by the respondents, with respect to the impugned demand raised by them is concerned, till the disposal of the present petition. Thereafter, the Commission heard the matter on various dates viz 23.10.2024, 11.12.2024, 13.02.2025, 25.03.2025, 14.05.2025, 03.06.2025, 05.08.2025 and finally on 25.09.2025.

4. **Respondent's reply:-**

DHBVNL (respondent no. 1) filed its reply, under an affidavit dated 10.10.2024, submitting as under:-

4.1 That the Petitioner No. 1 had executed a Connectivity Agreement with the Haryana Vidyut Prasaran Nigam Limited (HVPNL), for the purposes of transmission and wheeling of electricity to Petitioner No. 2. However, HVPNL has not been arrayed as a party respondent to the present proceedings. The power from the Plant is being evacuated through a 11kV line constructed and maintained by the Petitioner No. 1, upto the 132 kV Bhadson Substation of HVPNL/DISCOMs being the Injection Point

and is being drawn by Petitioner No. 2 at its premises located at Sector 83, Block Manesar, Tehsil Manesar and District Gurgaon being the Drawl Point. Further, a Banking Agreement dated 24.01.2020 has also been entered into between the Petitioner No. 1, the DISCOMs and HVPNL for baking of power upto 3MW.

4.2 At this stage, the relevant statutory provisions w.r.t. 'Captive Generating Plant' are reproduced below:

The Electricity Act, 2003

"Section 2. (Definitions): --- In this Act, unless the context otherwise requires--

…

(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,***

…

(15) ***"consumer"*** *means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;*

…

Section 9. (Captive generation):

(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the ***supply of electricity from the captive generating plant through the grid*** *shall be regulated in the same manner as the generating station of a generating company.*

[Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licencee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under sub- section (2) of section 42.]

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined

by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

The Electricity Rules, 2005

"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 co- operative society:

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

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

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 station shall not be less than twenty-six per cent 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) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.

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

a. "Annual Basis" shall be determined based on a financial year;

b. "Captive User" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "Captive Use" shall be construed accordingly;

c. "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;

d. "Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity."

4.3 That since the captive status is liable to be determined on "annual basis', as such, for evaluating the captive status of the Petitioners for the FY 2020-21, a Committee comprising of Superintending Engineer /CBO, DHBVNL and Company Secretary, DHBVNL was constituted by the Respondent. It was found that Petitioner No. 2 has not consumed more than 51% out of the total power generated by the Petitioner No.1's 5MW unit in FY 2020-21.

4.4 That in view of the non-compliance of Rule 3 of the Electricity Rules, 2005 by the Petitioners, a notice dated 06.06.2022 was issued to Petitioner no. 2 by the Answering Respondent intimating regarding its disqualification from captive status.:

*"After reviewing the documents, committee observed that **you did not fulfill the clause no. 3(a)(ii) of Electricity Rules, 2005, regarding captive status i.e. not less than 51% of the aggregate energy generated is consumed by the captive user**. So, your firm did not qualify the captive status for the FY 2020-21.*

…

*According, revised accounting of solar energy is done after disqualifying the captive status and found that only Rs.3,01,668/- is adjustable for FY 2020-21. However, Rs. 71,04,888/- is already adjusted during FY 2020-21 as captive user. **Hence, an amount***

<u>of Rs.68,03,220/- is to be reversed/charged for the FY 2020-21</u>*. Monthly adjustment sheets are attached herewith for ready reference."*

(Emphasis Supplied)

The aforesaid notice was followed by issuance of letter dated 16.09.2022. It is respectfully submitted that the impugned notices are a continuation of the aforesaid letters dated 06.06.2022 and 16.09.2022 which have not been challenged by the Petitioners till date before any Court of Law.

4.5 That in reply to the notices/letters issued by the Respondent, the Petitioners submitted that the power generated from its 5 MW generating unit was being used for the in-house consumption and for the consumption of its sister concern- Petitioner No. 2 only. The Petitioner relied on the judgment in the case of Monnet Ispat & Energy Limited etc. Vs. Union of India & Ors. [Civil Appeal No. 18506-18507 of 2017 (Arising out of SLP(C)Nos.17045-17046 of 2013). D/d. 13.11.2017] to state that more that 51% of the power generated was being consumed for own use by the Petitioners.

4.6 That there is no separate meter installed for monitoring of the auxiliary consumption of the Petitioners. The generation meter installed at generating point was not provided by the Petitioner and the accuracy of this meter and equipment was not verified by UHBVN/HVPNL authorities. The Petitioner neither provided the factum of installation of meter at their end nor got the same verified/inspected by the Respondent ever. Moreover, the monthly downloadable generation and consumption data was never provided by the Petitioner throughout FY 2020-2021. It is the injectable downloadable data, which is to be taken into account and the same has been duly considered by the Respondent.

4.7 That after due consideration of the reply submitted by the Petitioners as well as in view of the opinion of the Respondent that Rule 3 of the Electricity Rules, 2005 does not prescribe/ clarify whether the total generation or total injected energy is liable to be considered, a decision was taken by the Respondent to approach this Hon'ble Commission by way of filing a petition bearing PRO-07 of 2024 titled *Dakshin Haryana Bijli Vitran Nigam Limited Vs. M/s Piccadily Agro Industries Ltd. & Anr.*, seeking clarification with respect to the methodology for evaluation/calculation of the captive status of the Petitioners.

4.8 That the said petition was dismissed in limine, without going into merits of the case vide order dated 14.05.2024.

4.9 That the Respondent herein had re-calculated the amount recoverable after taking into account the methodology prescribed in the draft procedure for verification of captive status of generating plants issued by the Central Electricity Authority (CEA) on

01.11.2023. The relevant provisions of the CEA Draft Procedure are reproduced below for ready reference:

"9. Verification of the consumption criteria of CGP as required under Rule 3 of the Electricity Rules, 2005.

9.1 Criteria for Verification of consumption criteria:

9.1.1. In respect of single, the captive consumption shall not be less than 51% of the net electricity generated on an annual basis.

9.1.2. In respect of Cooperative Society, the Members of society shall collectively consume not less than 51% of the net electricity generated on annual basis.

…

9.3 The aggregate energy generated from CGP unit shall be the gross energy generated from the unit less aggregate auxiliary consumption during the time block. In the absence of measured data on auxiliary consumption, until metering as prescribed in clause 12 of this procedure/mechanism/Rule is completed, the normative auxiliary consumption for similar unit in the Regulations of the CERC may be considered for the purpose of CGP verification status.

9.4 The consumption of energy by the captive users with open access shall be considered as lower of actual energy generated by CGP unit(s) or actual energy drawn through open access limited to a maximum of scheduled open access energy during that time block as per Format V.

9.8 Verification of criteria of consumption shall be based on the net electricity generated from the generating unit(s) in a generating station, i.e., gross electricity generated less auxiliary consumption, identified for captive use."

(Emphasis Supplied)

4.10 That, it may also be relevant to refer to one of the opinions of an academic body dedicated to the regulatory research in the energy sector of India, namely, 'Center for Energy Regulation', Indian Institute of Technology, Kanpur, the relevant part of which is reproduced below:

*"**16. Uniform Definition for 'Net Electricity Generation':** In accordance with Clauses No. 8(9.1.2), "8. Verification of the ownership criteria of CGP, …: 9.1.2 In respect of Cooperative Society, the Members of society shall collectively consume not less than 51% of the **net electricity generated** on annual basis."*

- ***"Net Electricity Generation" may mean electricity generated net of auxiliary consumption or net of energy drawn from the grid**.*
- *Furthermore, need to clarify if banked energy would be netted and energy drawn against that would be added back to arrive at net generation."*

*(**Emphasis Supplied**)*

A perusal of the above shows that the power actually injected in the grid and the energy drawn from the grid is liable to be taken into consideration. It is humbly submitted that the present petition is based on the argument of the Petitioners that the electricity which has been consumed at the Petitioner No. 1 for running its distillery unit, sugar mill and the consumption of Petitioner No. 2 qua the other generating units of 6MW and 3MW is liable to be taken in account is fallacious as the said electricity was not injected into the grid. Further, such an argument raised by the Petitioners is not in consonance with the CEA Draft Procedure. Also, it is pertinent here to highlight that the meter installed at the Plant end has neither been intimated to the Respondent nor the same is verified, checked or inspected by the Respondent. The Respondent has no means to verify the alleged figures of generation of power relied upon by the Petitioner. It is also worthwhile to note that the Respondents even while giving adjustment on monthly basis has been considering the power injected into the grid and the same was never objected to by the Petitioner. As such, it cannot be contended by the Petitioner that the alleged generation figures solely under the control of the Petitioner has to be considered for computation of captive status.

4.11 That calculations were made in accordance with the CEA Draft Procedure (as per the table mentioned in the notice dated 21.06.2024) and recovery was sought from the Petitioners on account of their non-fulfillment of the captive status. For the ease of reference, the computation made by the Respondent is reproduced as under –

Detail of generation & Drawl of M/s Piccadilly for FY 2020-21								
Billing Month	**Total RE power injected**	**Imported Power considered as Auxiliary**	**Net RE power injected after Auxiliary power**	**Drawl on Real Time basis subject to schedule**	**Drawl from Banked energy subject to schedule**	**Transmission losses**	**Distribution losses**	**Total Drawl including losses**
A	**B**	**C**	**D=B-C**	**E**	**F**	**G**	**H**	**I=E+F+G+H**
Apr-20	1514260	3960	1510300	145042	0	30739	175945	351726
May-20	273499	9402	264097	34194	0	5552	31778	71524
Nov-20	123328	3508	119820	0	0	2652	25607	28259
Dec-20	1449133	5094	1444039	0	240699	31156	300895	572750
Jan-21	1533857	26037	1507820	0	228899	33131	318454	580485
Feb-21	1783668	11773	1771895	0	279332	38170	370395	687897
Mar-21	1432562	8100	1424462	0	374812	30227	297575	702614
Total	**8110305**	**67873**	**8042432**	**179236**	**1123741**	**171628**	**1520649**	**2995254**

Total Drawl including losses	2995254
Net RE power injected after Auxiliary consumption	8042432
% of drawl with respect to RE injected	**37.24%**

4.12 That no fresh/new cause of action has arisen in the favour of the Petitioners. The notices impugned by way of the present petition are in continuation of the earlier notices/letters dated 06.06.2022 and 16.09.2022 served upon the Petitioners which have not been challenged till date by way of filing any petition.

4.13 That the decision for filing the petition no. 7 of 2024 was taken on account of the bonafide reason of obtaining clarity with respect to the methodology of calculation to be adopted for computation of captive status. The reference to alleged legal opinion and notings are irrelevant and uncalled for as the same are mere opinion of specific lawyer or an officer, which is essentially an internal matter and carries no legal sanctity.

4.14 That the captive status is liable to be ascertained while taking into account only the 5 MW unit, in terms of Explanation (1) to Rule 3 of the Electricity Rules, 2005. The Petitioner was considered as 'captive' based on the proportionate division of qualification requirement of 26% ownership by Captive user. The Petitioner had specifically executed Banking Agreement and Connectivity Agreement with respect to one unit only. In view thereof, while assessing the captive status, the Respondent took note of the fact that since the captive user i.e. M/s Piccadilly hotels only own 14.57% ownership in the Plant of Petitioner, can the benefit of same be extended to the Petitioner. While deliberating the same, consideration was placed upon Explanation to Rule 3 of Electricity Rules, 2005. It was only considering that as per Rule, proportionate ownership was taken into account considering that it is only one unit that is being connected to the Respondent and can be considered as 'Captive Generating Plant'. If the contention raised by the Petition in the instant Petition is to be considered, in that case, the Petitioner would not even qualify under Rule 3(1)(a)(i) of Electricity Rules, 2005.

4.15 That explanation (1) to Rules 3 of the Electricity Rules, 2005 specifically states that- *"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."* The Petitioner is selectively reading the provision to seek unjust benefit of being a Captive Plant. Section 2(8) merely provides the definition of the Captive Generating Plant, which by no means contradicts the elucidation provided in the Electricity Rules, 2005, which provides that a unit of the Plant can be categorized as 'captive' and in that case, the unit only shall be viewed for meeting the qualification of captive status. It is further reiterated that for the sake of arguments, if the contention of the Petitioner is accepted that the whole plant capacity has to be considered for determination of captive case, in that case, the plant of the Petitioner will not even qualify for eligibility provided in Rule 3(1)(a)(i) of the Electricity Rules, 2005, which provides a mandatory pre-condition that the captive user shall have minimum 26% ownership in the 'Captive Generating Plant'. For FY 2021-21, considering the whole capacity of the Plant containing 4 units of 5 MW, the ownership of captive user is merely 14.57%.

4.16 That consumption made in the Sugar Mill or Distillery Unit cannot be considered as captive consumption because it is only the 'Piccadilly Hotels', which is a captive user under the Banking Agreement. The Petitioner cannot raise contentions contrary to the terms of agreement entered into between the parties to fill up gaps/ lacunas in meeting their qualification as 'Captive Generating Plant'. The interpretation given by the Petitioner to Explanation-1 of Rule 3(1)(a) of the Electricity Act, 2003 is erroneous and self-serving. A bare perusal of the Explanation (1) to Rule 3 read with Illustration provided in the Electricity Rules, 2005 establishes that the interpretation averred by the Petitioner is erroneous. In the case, the interpretation of the Petitioner is accepted, the same would also be relevant to assess the requirement met under Rule 3(1)(a)(i). In that case, the plant of the Petitioner would outrightly be rejected for consideration as Captive user does not hold 26% ownership in the Plant of 17 MW capacity. Only one unit of the Petitioner's Plant having capacity of 5 MW is connected with the grid and it is only this unit for which the Banking Agreement and Connectivity Agreement has been executed by the Petitioner.

4.17 That the definition of Captive Generating Plant under Section 2(8) of the Act which uses the words, "*primarily for his own use*", has been given statutory grail vide Rule 3 of the Electricity Rules, 2005. Rule 3 incorporates two separate requirements. The first requirement is that the captive user(s) should have not less than 26% of the ownership in the Captive Plant. The second requirement relates to the minimum electricity consumption. It is well settled that 51% of aggregated or more of the generated electricity should be consumed by the user(s) who meets the ownership requirement. The petitioner is seeking to urge that their self-prepared log book entries, shall be considered and the consumption made at generating end shall be included so as to declare them 'captive'. However, this is not the scheme of the Act and the Rules framed thereunder.

4.18 That the reliance placed by the Petitioners on ***Monnet Ispat (Supra)*** has already been taken into account, after which a petition was duly filed by the Respondent before the Hon'ble Commission. In Monnet Inspat case however, the issue was whether Rule 3(1)(a) of the Electricity Rules, 2005 is violative of provisions of Electricity Act, 2003. It was held that the minimum electricity consumption requirement under paragraph (ii) to Rule 3(1)(a) of the Electricity Rules, 2005 conforms with the requirement under Section 2(8) of the Act and the electricity generated by the Plant should be "primarily for its own use". The Petitioner is now seeking to give its interpretation to the expression own use, which is not tenable. The Explanation to Rule 3(b) and illustration thereto amply clarifies that the energy consumed by 'Piccadilly Hotels' is what is the own consumption for the purpose of evaluation of captive status. It is submitted that while deciding the

petition filed by the Respondent, the Hon'ble Commission had directed that the CEA Draft Procedure be referred to for making requisite calculations. As such, the notices which have been impugned by way of the present petition have been issued only after making the calculation in terms of the CEA Draft Procedure.

4.19 That the Respondent has taken into account only injected energy, which is the only figure available with the Respondent as per metered data and the said injection data has been compared to drawl energy by Captive user. The injected data considered is apparently exclusive of Auxiliary consumption i.e. the consumption at the generating end. Therefore, the contention of the Petitioner that Auxiliary consumption was not taken into account is incorrect. The injected power, which is injected by the Petitioner as balance surplus power after consumption of required power is evidently net of Auxiliary consumption. It is pertinent to mention that there have been instances where the Petitioner has consumed the entire power and not injected any power or has consumed more power than generated, in that case, the Respondent has considered imported energy as auxiliary and has given the benefit of same while determining the net injected power. It is wrong and denied that the electricity used by the Petitioners for the running of various equipment's is liable to be excluded, only after which calculation is to be made. Even otherwise, the list appended by the Petitioners is a subject matter of verification and cannot be relied upon without any proof of its authenticity.

5. **Petitioner (s)'s rejoinder: -**

The petitioner (s) have filed their rejoinder dated 14.11.2024, to the reply filed by DHBVNL. The petitioner (s) have submitted as under:-

5.1 That the objection/allegation that there is no separate meter installed for monitoring auxiliary consumption of the Petitioners is incorrect and misconceived. The Petitioner No.1's generation station for the present case (5 MW subject unit) has a separate meter installed for monitoring auxiliary consumption.

5.2 That the allegation that the (a) generation meter installed at generating point was not provided by the Petitioner and accuracy of this meter and equipment was not verified by UHBVN/HVPNL; (b) neither factum of installation of meter at the Petitioners' end was provided nor the Petitioners got such meter verified/inspected by Respondent ever; (c) monthly downloadable generation and consumption data was never provided by the Petitioner for FY 2020-2021; are wholly incorrect and misconceived. In this regard, the Petitioners submit as under without prejudice to each other: -

(i) The generation meter installed at the generation point by the Petitioners and data thereof cannot be merely discarded by the Respondent on the ground that such meter was not provided by the Petitioners to the Respondent and its accuracy

was not verified especially when as per Rule 3 of the Electricity Rules, 2005 prescribes determination on the basis of 'electricity generated' for determination of captive status.

(ii) As per the extant regulations and as per the Appendix-I B of "*Procedure for Intra-State Short Term Open Access of Transmission and/or Distribution System of HVPNL/UHBVNL and DHBVNL*" finalized in terms of Regulation No. HERC/25/2012 notified on 11.01.2012, it was always Respondent's/HVPNL's obligation *inter alia*

(a) to provide for a Unique identification code/UIC of meter/generation meter and thereafter, the customer/Petitioner No.1 could have procured meter as required;

(b) to examine and test all meter/generation meter before installation and to ensure that only correct meter is installed;

(c) to operate and maintain such meter;

(d) to take down the meter reading and EAC is required to verify the correctness of the data and furnish the same to various agencies;

(iii) That it is the Respondent's responsibility to provide with a UIC and then to ensure that the meter/generation meter installed is proper and also to take down the meter reading, etc. It is an admitted position that no such obligation has been undertaken by the Respondent in respect of the meter installed at the generation point of the Petitioners. Having not undertaken such responsibilities the Respondent cannot be permitted to contend that the generation meter and data thereof are to be discarded.

(iv) That prior to the grant of NOC/approval for short term open access the Respondent is required to grant a conditional approval for grant of the STOA as per Format (Appendix-II-J) to the customer/Petitioner. In other words, only after compliance of conditional approval for grant of STOA as per the said format NOC/approval for STOA is to be granted. As per such provisions and also the said Format (Appendix-II-J) it is clear that the Respondent while granting such conditional approval is required to stipulate that the customer will get installed ABT complaint special energy meter with required specification as one of the conditions for such approval. It is a matter of record that ABT complaint special energy meter was installed at injection point/ sub-station point but no such meter was called upon to be installed in respect of the generation meter/generation point. Despite the said factual position the Respondent had been granted year on year NOC/approval for STOA making it clear that the Respondent does not

require the verification or the generation meter and/or the data thereof and it has no reason to disbelieve the same.

(v) Pertinently, as per the "*Procedure for Intra-State Short Term Open Access of Transmission and/or Distribution System of HVPNL/UHBVNL and DHBVNL*" finalized by HVPNL in terms of Regulation No. HERC/25/2012 notified on 11.01.2012 it is clear that NOC/approval for STOA could not have been granted unless the Respondent was satisfied with the installation of required meter and certification thereof. As such, with the grant of NOC/approval for STOA to the Petitioner it has to be deemed that the meter/generation meter installed has been verified by the Respondent and in any case the same is as per the requirement of the Respondent. In any case, it is clear that the Respondent was satisfied with the meter/generation meter of the Petitioners. Accordingly, the Respondent cannot be permitted to contend that the generation meter and data thereof cannot be trusted/believed.

(vi) That the Respondent was not only within its rights, but it was also its responsibility to inspect as well as take meter readings from the generation meter of the Petitioner. It is not even the case of the Respondent that it was obstructed to do so by the Petitioners at any point in time. Having not done the same the Respondent cannot be permitted to question the genuineness of the said meter or data thereof.

(vii) That in July 2022 the Respondent's Sr. A.O., CBO, DHBVN Hisar visited Petitioner No.1's and sought for the generation data for FY 2020-2021 which was duly provided. Thereafter, the Petitioners were asked to get their metering equipment tested by NABL accredited laboratory which was done on 19.04.2023 and a report was duly signed by SDO M&P UHBVN, SDO M&P HVPNL, SDO (OP) UHBVN and Petitioner's representative in this regard. Vide email dated 28.04.2023, the Petitioners provided the said report and the certified generation data. As such, the Respondent had sought post facto testing/ratification of the generation meter which again came to its satisfaction. Further, admittedly the generation data is with the Respondent at least since 2022/2023 and also filed with the petition however, the Respondent has not been able to point out any credible and cogent discrepancy with the said generation data.

(viii) That the contention that only injectable downloadable data is required to be taken into account for determining the captive status which the Respondent has duly considered, is *ex-facie* contrary to plain reading of the Rule 3 of the Electricity Rules was per which only 'electricity generated' is the parameter to be considered and not 'energy injected'. Clearly, the Respondent has devised its

own ‘parameter’ of determination of captive status which is impermissible. Further, the said Rule does not even state that in the absence of any verifiable data only ‘injectable data’ is to be considered. The expression used is ‘electricity generated’ and as such generated electricity by the Petitioner No.1 is required to be considered for determination of the captive status. Without prejudice to any rights and contentions, the sequitur of the expression used ‘electricity generated’ means that if the data of electricity generated is available then the same shall be the parameter of determination of captive status at the highest subject to verification of such data.

(ix) That admittedly the generation data of the Petitioner in question was available with the Respondent and not only they never objected to the authenticity of such data as sought to be done at this stage, but they even accepted the same and based the petition bearing PRO-07 of 2024 titled *Dakshin Haryana Bijli Vitran Nigam Limited vs. M/s Piccadily Agro Industries Ltd., & Anr.* seeking clarification from this Hon’ble Tribunal. In the said petition, the Respondent relied on the generation data of the Petitioner No.1 in respect of scenario no. 2 & 3. As such, the Respondent is estopped to question the authenticity of such generation data. It is also noteworthy to state as per the said petition the Respondent sought clarification with regard to inclusion of in-house consumption and exclusion of auxiliary consumption.

5.3 That the allegation/contention that ‘this Hon’ble Commission in its order dated 14.05.2024 directed the Respondent to refer the draft procedure of the Central Electricity Authority (CEA) dated 01.11.2023’ is factually incorrect and is a deliberate misreading of the said order. In this regard, the Petitioners submit as under:

(i) On a plain reading of paragraph-9 of the said order it is clear that this Hon’ble Commission has held that it is the Respondent who has to act in accordance with the relevant provisions of Act/Rules.

(ii) The latter portion of the order records that while acting in accordance with the relevant provisions of Act/Rules the Respondent ‘can be guided’ by the CEA draft procedure. As such, there is no direction to the Respondent to decide mandatorily to refer the draft CEA procedure.

(iii) The Hon’ble Commission clearly was not deciding any issue and in fact left it to the Respondent to act in accordance with the relevant provisions of law.

(iv) The sequitur of the order at the highest is if the draft CEA procedure is applicable then you can be guided by it but the same has to be legally applicable.

(v) In any case, the draft CEA procedure was admittedly draft in nature and this Hon’ble Commission by no stretch of imagination can be said to apply a draft

procedure in respect of a transaction which stands concluded in the year 2020-2021.

(vi) Moreover, this Hon'ble Commission merely observed, 'can be guided'. As such, this Hon'ble Commission merely meant that 'decide in accordance with the relevant provisions of Act/Rules and in the said process if there is any guidance available from the said draft CEA procedure Respondent can take the same provided it is legally in consonance with the prevailing acts and rules.

(vii) Clearly, this Hon'ble Commission never directed that the methodology prescribed in the draft CEA procedure is to be adopted by the Respondent and as such without application of any mind the Respondent applied the methodology of a draft procedure which is yet to be finalized. The Respondent did not even bother to examine whether such methodology (which is yet to be finalized) in 2023 will even be applicable to an already concluded transaction in 2020-2021 when such draft CEA procedure was not even in existence.

(viii) In any case, the Respondent has not even applied the draft CEA procedure strictly which is evident from the fact that as per the said procedure the Respondent was required to consider 'net electricity generated' after excluding auxiliary consumption. Admittedly, the Respondent has ignored the net electricity generated and considered the net electricity injected by the Petitioners. Even the actual auxiliary consumption has not been excluded by the Respondent.

5.4 That the contention that as per Opinion of Center for Energy Regulation, Indian Institute of Technology Kanpur extracted in para-14 of the reply shows that the power actually injected in the grid is liable to be taken into consideration for determination of captive status is totally incorrect and misconceived.

(i) The said opinion is in respect of proposed procedure for verification of captive status of such generating plants, where captive generating plant and its captive user (s) are located in more than one state. As such, not only the response/opinion in respect of a situation/problem which is yet to be finalized but even otherwise the said opinion is for an entirely different issue not the issue in hand including the fact that in the present case the captive user is in the same state as that of the generating station. Thus, the said opinion is *ex-facie* applicable to the facts of the present case.

(ii) In any case para-16 of the said opinion extracted by the Respondent in paragraph-14 of the reply clearly states the 'Net Electricity Generation' may mean electricity generated net of auxiliary consumption or net of energy drawn

from the grid (i.e., such power/energy which the plant may draw from the grid for startup or other purposes). Thus, even this suggested meaning does not indicate or states that the power actually injected in the grid is to be taken into consideration. As such, the Respondent is completely misreading the said inapplicable opinion to drive a completely incorrect narrative just to justify its impugned demand.

5.5 That on a bare perusal of purported table/chart made in the reply filed by DHBVNL, it is evident that the Respondent has considered the imported power by the Petitioner from the grid as 'auxiliary energy' for determining the captive status. This treatment is in the teeth of Rule 3 of the Electricity Rules and also the HERC RE Regulations as per which the auxiliary consumption has to be excluded. This position is accepted by the Respondent while relying on draft CEA procedure but instead of excluding auxiliary consumption it excludes the 'power imported by the Petitioner No.1'. Clearly, the alleged concept of exclusion of 'power imported from the grid' is not based on draft CEA procedure but based on the opinion of Center for Energy Regulation (CER) relied in the reply. Thus, the Respondent has conveniently adopted part of CEA procedure and part of alleged opinion to justify its impugned demand.

5.6 That the Petitioner is paying for 1 MVA power to be taken from the UHBVN and as such auxiliary consumption considered by the DHBVN is to be excluded. CoA copy of the bill for the month of September 2024 is annexed herewith.

5.7 That from the petition bearing PRO-07 of 2024 filed by the Respondent it is clear that despite having a legal opinion in favor of the Petitioner, the Respondent sought clarification from this Hon'ble Commission. As such, it is the Respondent who had supposed confusion and there was no occasion for the Petitioners to approach this Hon'ble Commission especially when the Respondent had confusion and sought legal clarification. It is further clear that the Respondent has finally taken a decision after 14.05.2024 in the form of the impugned demands and as such the cause of action, if any, for the Petitioners to approach this Hon'ble Commission is post such demand and against which the Petitioners has filed the present petition. Moreover, the right to challenge any adverse order against the Petitioners was clearly contemplated and saved by this Hon'ble Commission in the order dated 14.05.2024. In any case, the impugned demands are amenable to challenge under Section 86(1) of the Electricity Act, 2003.

5.8 That the nature of the erstwhile petition filed by the Respondent and the nature of petition filed by the Petitioners is entirely different. The cause of action for the Respondent was different whereas the cause of action for the Petitioners is different.

The Respondent sought clarification from this Hon'ble Commission while the Petitioners are now aggrieved by the impugned demands raised by the Respondent and this Hon'ble Commission has jurisdiction to decide and entertain in terms of provisions Section 86 of the Electricity Act, 2003. As such, there is no question of the present petition being a petition on the same cause of action. There is no question of any estoppel against the Petitioners as sought to be contended or even otherwise.

5.9 That the contention that by following the draft CEA procedure the Respondent has complied with the Order dated 14.05.2024 of this Hon'ble Commission is totally incorrect and fallacious for the reasons already detailed above.

5.10 That the contention that in view of the compliance of the order dated 14.05.2024 by the Respondent the remedy of the Petitioners is to file appeal against such order and the same res cannot be adjudicated once against before this Hon'ble Commission is totally incorrect and fallacious. In this regard, the Petitioners submit as under:

(i) The order dated 14.05.2024 itself holds that if the Petitioners are aggrieved by the decision proposed to be taken by the Respondent, then they may challenge the same as per the provisions of Act and rules framed thereunder.

(ii) Further, the impugned demands are amenable to a dispute between the Petitioners and the Respondent for which this Hon'ble Commission has statutory power, and the Petitioners have statutory right to challenge the same under the Electricity Act, 2003.

(iii) The sequitur of the Respondent's contention is that this Hon'ble Commission has already decided the *lis* between the parties and the Respondent has merely complied with the said decision. This is ex-facie contrary to plain reading of the order dated 14.05.2024 as per which this Hon'ble Commission left the decision to be taken by the Respondent in accordance with law. Clearly, this Hon'ble Commission has not even decided any issue and despite being such position the Respondent seeks to contend that its decision cannot be even examined by this Hon'ble Commission.

5.11 That the entire energy injected from the subject 5MW unit of the Petitioner No.1 has been banked under the then prevailing Banking Agreement. Even as per the Respondent more than 81 lacs units has been injected by the Petitioner No.1 from its 5MW unit and such energy was injected for banking under the then prevailing Banking Agreement for consumption by the Petitioner No.2. As such, no energy has been sold or supplied to any person. Without prejudice to any rights and contentions, such banking shall also be deemed to be used/consumed.

5.12 That it is denied that captive status is liable to be ascertained while taking into account only the 5MW unit, in terms of Explanation (1) to Rule 3 of the Electricity Rules, 2005 as alleged. In any case, in the event the proportionate ownership of the Petitioner No.2 in the plant/5MW is to be considered that the captive consumption/use of the Petitioner No.2 is to be also proportionately considered out of total 51%. In other words, the captive consumption of Petitioner No.2 for qualifying captive criterion has to be only 14.896 % against its required proportionate ownership/shareholding of 7.6 % in the said 5 MW unit. Admittedly, even as per the Respondent's purported calculation the said consumption is around 37% which is much more than the required 14.896 %. In any case, even if the entire shareholding of 14.57% of the Petitioner No.2 in Petitioner No.1 company is to be considered even then the required consumption shall be around 28.55% which is much more than the consumption by Petitioner No.2 even as per the Respondent. Further, Petitioner No.1 and Petitioner No.2 are group companies with commonality in shareholdings and management (directly and indirectly) and there was no sale of any power to any other person for the FY 2020-2021 and total consumption of power was by the said two Petitioners. That the captive generating plant/ 5MW unit of the Petitioner No.1's owned by the Petitioners are also as association of persons and the same are required to comply conditions under Rule 3(1)(a) of Rules read with second proviso of the Rule 3(1)(a). It is settled law that the proportionality test applies to the ownership and consumption by group of captive users.

6. **Reply filed by HVPNL (Respondent no. 2):-**

The Commission, vide its interim order dated 12.12.2024, had impleaded HVPNL as Respondent No. 2. HVPNL was directed to file its reply within two weeks. Accordingly, HVPNL filed its reply dated 28.02.2025, submitting as under:-

6.1 That the objection/allegation that there is no separate meter installed for monitoring auxiliary consumption of the Petitioners is incorrect and misconceived. The Petitioner No.1's generation station for the present case (5 MW subject unit) has a separate meter installed for monitoring auxiliary consumption.

6.2 That the petitioner, in the rejoinder to the reply of the Respondent no. 1 i.e. DHBVNL has averred following as regards the obligation of Respondent no. 2 i.e. HVPNL –

"As per Appendix -I B of "Procedure for intra-state Short Term Open Access of Transmission and/or Distribution System of HVPNL/UHBVNL and DHBVNL" finalized in terms of Regulation NO. HJERC/25/2012 notified on 11.01.2012, it was always Respondent's/HVPNL's obligation inter alia

a) To provide for a Unique Identification code/UIC of meter/generation meter and thereafter, the customer/Petitioner No. 1 could have procured meter as required;

b) To examine and test all meter/generation meter before installation and to ensure that only correct meter is installed;

c) To operate and maintain such meter;

d) To take down the meter reading and EAC is required to verify the correctness of the data and furnish the same to various agencies;..."

6.3 That with reference to the forgoing procedure, the Petitioner has contended that:-

a) It was the HVPNL responsibility to check the meter installed in the generator premises, provide a UIC and takedown meter reading etc., which has not been undertaken;

b) As per format for approval for grant of STOA (Appendix-II-J), it was the responsibility of the HVPNL to ensure that the Petitioner has installed ABT complaint special energy meter with required specification;

c) Year on Year NOC/approval for STOA was granted making it clear that the Respondent doesn't require the verification of the generation meter or the data thereof;

d) With the grant of NOC/approval for STOA, it is deemed that the meter installed at the generator premises has been verified by the Respondent and is as per the requirement of the Respondent;

e) It was the responsibility of the Respondent to inspect as well as take meter readings from the generation meter of the Petitioner; and

f) Petitioners were asked to get the metering equipment tested by NABL Accredited laboratory which was done on 19.04.2023 and a report was duly signed by SDO M&P UHBVN, SDO M&P HVPNL, SDO (OP) UHBVN and the Petitioner.

6.4 That the foregoing contentions raised by the Petitioner are incorrect, misconceived and mis-represented. It is imperative to highlight that under a Short-Term Open Access (STOA) approval, HVPNL only ensures the installation of a meter at the substation, and there is no requirement to install a separate meter at the consumer's premises, as STOA involves temporary access to the grid for a short duration and the metering is done at the grid connection point at the substation. When a generator uses STOA, their electricity usage is measured at the substation level through a single meter, rather than individual meters at each consumer site. This approach simplifies the process of managing short-term open access as it requires less installation and maintenance compared to individual consumer meters.

6.5 That Regulation 2.2 of Procedure for Short Term Open Access for intra-state short term open access of transmission and/or distribution system of the HVPNL/ UHBVNL

and DHBVNL explicitly provides requirement for installation of ABT Compliant meter at sub-station end only. The said Regulation is reproduced hereunder for ready reference –

"2.2 On meeting the mandatory eligibility requirements, the applicant shall be issued the approval for grant of Short-Term Open Access/NOC/Standing clearance/concurrence whichever is applicable by the Nodal Agency. Thereafter, the following pre-conditions are required to be fulfilled by the Open Access applicant:-

i) Metering Requirements:

a). The Open Access Customer and ***all generating stations irrespective of capacity shall provide ABT compatible Special Energy Meters meeting latest with technical specification of HVPNL at the point(s) of injection and point(s) of drawl*** *if not already provided. Special Energy Meters installed shall be capable of time-differentiated measurements for time-block-wise active energy and voltage differentiated measurement of reactive energy* ***in accordance with the metering regulation of CEA and the provision of Haryana Grid Code****. The Open Access Customer shall provide ABT compliant Main Meters, Check Meters of the same specifications as Main Meters at the point(s) of injection and point(s) of drawl as specified in the Haryana Grid Code.*

(Emphasis Supplied)

Further, Appendix I-B to the Procedure for Short Term Open Access lists down '*Guidelines for installation of Metering Equipments and arrangements at the premises of Open Access Customers',* which clearly provides that the meter are to be installed near line bay in Sub Station Yard.

6.6 That as per Haryana Grid Code Regulations, 2009 referred to at Sr. No. 2.2 of the Procedure for Short Term Open Access, the metering point shall be at the outgoing feeder of power station switchyard. Regulation 4.17 of the Haryana Grid Code is reproduced hereunder for ready reference -

"4.17 CONNECTION POINT

4.17.1 Generator Voltage may be 11 kV and above or as agreed with the transmission licensee. Unless specifically agreed with the transmission licensee, the connection point shall be the outgoing feeder gantry of power station switchyard. Metering point shall be at the outgoing feeder. All the terminal communication, protection and metering equipment owned by the generator within the premises of the generator's site should be maintained by the generator. The respective users shall maintain other users' equipment. From the outgoing feeder gantry onwards, the transmission licensee shall maintain all electrical equipment." (Emphasis Supplied)

6.7 That Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 also specifies the Location of meter for the Generating Station as –

Generating Station *Main meter: On all outgoing feeders.* *Check meter: On all outgoing feeders.* *Standby meter: (i) High Voltage (HV) side of Generator Transformers* *(ii) HV side of all Station Auxiliary Transformers*

6.8 That in response to the application of the Petitioner for grant of Short-Term Open Access, HVPNL vide letter dated 16.01.2015, duly intimated the Petitioner that an ABT Compliant Special Energy meter has to be installed at the sub-station end.

6.9 That a Tripartite Banking Agreement was executed between the parties on 23.01.2015, wherein it was explicitly mentioned that the injection point shall be 132 kV substation Bhadson and HVPNL will prepare monthly energy account for injecting and drawing power after accounting for applicable T&D losses.

6.10 That the Petitioner, vide their letter dated 29.01.2015 gave intimation to the HVPNL regarding the synchronization of 11 KV Bio-Mass Supply from M/s Piccadilly Agro Industries Limited. Along with the said intimation, a copy of status report of metering unit was sent which related to the Energy meter installed at 132 kV Sub-station, Bhadson. There was no reference or request as regards inspection of the meter installed at their premises till the dispute emerged as regards the accounting of the injected energy for the purpose of captive consumption. It is therefore, evident that the Petitioner was aware that the metering point is 132 kV Sub-station, Bhadson alone and HVPNL is obligated to ensure its calibration as per specified standards.

6.11 That the Petitioner, vide their letter dated 05.03.2015, also acknowledged that the injection point shall be 132 kV substation, Bhadson and drawl point will be Piccadilly Hotels Pvt. Ltd. as per the agreement executed between the parties.

6.12 That a Connection Agreement was executed between the Petitioner, UHBVN and HVPNL on 28.02.2020 for evacuation of power to be injected by the Petitioner from their project and use of Transmission Distribution system of HVPNL/ Discoms to transmit/wheel electricity from the Project as per HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017. In this said agreement as well, the point of injection of power and drawl of power was clearly specified as 132 kV sub-station, Bhadson and Piccadilly Hotels Pvt. Ltd. respectively.

6.13 That from the foregoing that the requirement for installation of meter was clearly at the sub-station end and HVPNL is only obligated to ensure compliance of requisite specifications for installation of meter at sub-station end and take readings from the said meter. The meter installed by the Petitioner at their generation end is solely at the choice of the Petitioner and is not of any relevance for energy accounting to be prepared by the HVPNL. In view thereof, the contention of the Petitioner to the effect that it was the responsibility of HVPNL to check the meter installed in the generator premises, provide a UIC and takedown meter reading etc. is incorrect and beyond the regulatory framework. It can therefore, be incorrect to state that grant of year-on-year approval signifies deemed verification of the meter installed at the generator premises.

6.14 That as regards the request of the Petitioner made in the year 2023 to get the meter installed at their premises tested, it is submitted that the if a generator represents for testing of their metering equipment, the HVPNL representative attends to the same. However, that does not mean that the same obligates HVPNL to consider energy accounting based on readings from the said meter. As is elucidated above, it is evident that it was made absolutely clear that the metering point to be considered as part of connectivity with the HVPNL sub-station is the meter installed at the sub-station end.

7. **Petitioner's rejoinder dated 24.03.2025 to the reply filed by HVPNL:-**

7.1 That the Respondent has contended that '*When a generator uses STOA, their electricity usage is measured at the substation level through a single meter, rather than individual meters at each consumer site. This approach simplifies the process of managing short-term open access as it requires less installation and maintenance compared to individual consumer meters'*. This contention is incorrect and misconceived for the following reasons:

(i) The said contention completely ignores the contentions of the Petitioner raised in the rejoinder filed by the Petitioner.

(ii) The contention also ignores the regulations/provisions of STOA Procedure;

(iii) The contention merely suggests that what Respondent No.2/HVPNL does in respect of STOA which is not the answer what it is required to do under the above-said procedure.

(iv) Without prejudice to any rights and contentions, HVPNL is confusing the issue of 'electric generation' for a generator in respect of captive consumption with the 'electric usage'/ 'electric accounting' for the purpose sale or banking.

(v) In any case, the issue sought to be raised by the Respondent is whether the meter installed at the generation end can be relied upon considering the electricity generated and/ consumed, apart from accuracy thereof amongst others.

(vi) Admittedly, HVPNL's contention is that the approach of installing meter at substation end is a simpler process of managing STOA etc., This is no cogent or legal ground to reject the accuracy of the meter or authenticity of data recorded by meter installed at the generation end of a generator.

7.2 That the Respondent No.2 has contended that Regulation 2.2 of the above said STOA Procedure explicitly provides requirement for installation of ABT Compliant meter at Sub-station end only. This is also incorrect and misconceived for the following reasons:

(i) The contention also ignores the other regulations/provisions of STOA Procedure. The quoted Regulation 2.2 does not even state that the ABT complaint meter is to be installed at sub-station end only.

(ii) Appendix-I B of the STOA Procedure clearly states the location of interface meter at the outgoing feeder (for generator) and at the transmission licensee's sub-station or as agreed with the transmission licensee/distribution licensee. The said provision belies the contention of HVPNL. The relevant portion of Appendix-I B is extracted as under:

(iii) *The following guidelines are to be strictly implemented for installation of Interface metering equipments including ABT compliant special energy meters (SEM) of accuracy class 0.2S and connecting arrangements for metering of open access customers.* ***The location of interface meter shall be at the outgoing feeder (for generator) & at the transmission licensee's sub-station or as agreed with the transmission licensee/distribution licensee.*** *The interface meters conforms to the standards on "installation and Operation of Meters' and as amended from time to time. The supplier or buyer in whose premises the interface meters are installed shall be responsible for their safety.*

7.3 That the contention that Appendix-I B provides that the meter is to be installed near line bay in Sub Station Yard is completely incorrect and misconceived. The same is an outcome of selective reading of the provisions of the Appendix-I B. The provision of installation of a meter near the bay line in Sub Station Yard is in respect of meter to be installed at the substation end. The same does not mean that there will be no meter to be installed at the generation end.

7.4 That the reliance on Regulation 4.17 of the Haryana Grid Code and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 to contend that only one meter is required to be installed at the substation end is completely incorrect and misconceived as well as denied. In fact, the locations provided in the Haryana Grid Code and CEA regulations (though not applicable) clearly establish that meters are to be installed at the generation end as well as the substation end.

7.5 That the reliance on the letter dt. 16.01.2015 of HVPNL is misconceived. In the said letter, HVPNL merely states that an ABT Compliant Special Energy meter has to be installed at the sub-station end. This letter in essence actually supports the case of the Petitioners. HVPNL does not state anything about the meter to be installed at the generator's end in the said letter. In any case, the said letter in no manner means that the meter installed at the generator's end is improper or its accuracy and the data generated by it cannot be relied upon.

7.6 That the reliance on the Tripartite Agreement dated 23.01.2015 is misconceived. The said Agreement merely states that (i) injection point shall be 132 kV substation Bhadson and (ii) monthly energy account for injecting and drawing power after accounting for applicable T&D losses. This agreement does not state anything about the meter to be installed at the generator's end or that the meter installed at the generator's end is improper or its accuracy and the data generated by it cannot be relied upon. The said agreement in no manner states that the meter installed at the generator's end will not be considered for generation and/or captive consumption.

7.7 That the reliance on the letter dated 29.01.2015 by HVPNL is incorrect and misleading. As stated in the rejoinder qua Respondent No.1's reply HVPNL was statutorily obligated to provide a UIC in respect of the meter as well as also inspect from time to time. The said letter cannot be used as an excuse for not complying with provisions of the STOA Procedure. Once HVPNL failed to comply with the preliminary requirement regarding providing UIC it does not lie in the mouth of the HVPNL to contend anything to the contrary. The contention that the meter inspection was required for accounting of the injected energy for the purpose of captive consumption itself is flawed and baseless. It is reiterated that captive consumption is required to be considered visa viz the generated energy and not injected energy as contended by HVNPL. The contention that the Petitioner was aware that the metering point is 132 kV Sub-station, Bhadson alone is totally incorrect and misconceived.

7.8 That the reliance on the letter dated 05.03.2015 and Connection Agreement dated 28.08.2020 by HVPNL is incorrect and misleading. Having an 'injection point' and 'drawl point' does not mean that there can be no meter at the generator's end or that such meter would not be accurate or that the data recorded in such meters will not be accurate or considered for captive consumption.

Commission's Analysis and Order

8. The case was finally listed for hearing on 25.09.2025, wherein the Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties. The petitioner (s) herein have approached this

Commission seeking to quash the impugned notices bearing No. Ch-605/13/SE/CBO/OA dated 21.06.2024 and bearing No. Ch-605/13/SE/CBO/OA dated 21.06.2024, issued by the respondent no. 1 on the petitioners, containing the 'impugned demand' of Rs. 68,03,220/-, intimating that the petitioner no.1 does not qualify the condition of captive status as per Rule 3(1)(a)(ii) of the Electricity Rules, 2005, as petitioner no. 2 has only consumed 37.24% of the generated energy by the petitioner no.1 in the financial year 2020-21.

9. The respondent no. 1 has averred that the captive status is liable to be ascertained in respect of one unit of 5 MW out of four units totalling 17 MW, as a single captive user declared by the petitioner (s), in terms of Explanation (1) to Rule 3 of the Electricity Rules, 2005. The captive user i.e. M/s Piccadilly hotels own 14.57% ownership in the power plant of the petitioner. Further, the second requirement relating to the minimum electricity consumption of 51%, provided under Rule 3(1)(a) (ii) of the Rules, has not been fulfilled by the petitioner, as the petitioner has consumed only 37.24% of the energy injected in the grid.

10. Per-contra, the petitioner has vehemently argued that the respondent no. 1 has wrongly rejected its captive status, considering only 5 MW Generating Unit as a "Captive Generating Plant" within the meaning of Section 2(8) of the Electricity Act, as against total capacity of 17 MW generating power plant with four units, which is owned and operated as Captive Generating Plant". Alternatively, proportionality test applies to the ownership and consumption by group of captive users. The petitioner no. 2 fulfill the ownership requirement applying the proportionate rule at 14.57% (against the proportionate requirement of 26*5/17 = 7.64%). Similarly, the second condition of self-consumption of 51%, in proportion to the ownership of 14.57%, comes at 28.57% (51*14.57/26 = 28.57%). The petitioner has argued that as against the requirement of 28.57% self-consumption, the petitioner no. 2 has consumed 37.24%, thereby, complying with both conditions specified under Rule 3(1)(a)(i) & (ii) of Electricity Rules, 2005, for qualifying captive power plant. Further, in the present case, entire energy generated by 5 MW unit of the power plant of the petitioner no. 1, is self consumed by petitioner no. 1 and the remaining energy is injected into the grid for banking and self consumption by the petitioner no. 2.

11. The Commission has considered it appropriate to refer to the relevant provisions of the Electricity Act, 2003 as well as the Electricity Rules, 2005, reproduced hereunder:-

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

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;"

Section 9 of the Electricity Act 2003 defines "Captive Generation" as under: -
(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:
Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.
[Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licencee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under sub- section (2) of section 42.]
(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:
Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:
Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

Rule 3 of the Electricity Rules, 2005, provides 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:

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 co-operative society:

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

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

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 station shall not be less than twenty six per cent 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) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.

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

a. "Annual Basis" shall be determined based on a financial year;

b. "Captive User" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "Captive Use" shall be construed accordingly;

c. "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with

voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;

d. *"Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity."*

12. From the examination of provisions of the Electricity Act, 2003 as well as the Electricity Rules, 2005, reproduced above, it is apparent that Section 2(8) of the Act recognizes two categories of CGPs, i.e. Single Captive User and Group Captive Users and for Group Captive Users i.e. more than one captive user, only two categories of users are recognized i.e. a Cooperative Society and Association of Persons. The first proviso to Rule 3(1) (a) of the Electricity Rules, 2005 creates an exception for cooperative societies, which requires that the members of the cooperative society to only collectively satisfy the minimum ownership and electricity consumption requirements. The second proviso to Rule 3(1)(a), which refers to Association of Persons, requires such captive users to satisfy the minimum ownership and electricity consumption requirements and additionally it also requires such Captive Users to consume not less than 51% of the electricity generated by the CGP, in proportion to their individual shares in the ownership of the CGP, which shall not be less than 26% in aggregate. Thus, the test of proportionality is applicable to the Group Captive Users, registered as Association of Persons only as specified in the first and second proviso to Rule 3(1)(a). Further, the test of proportionality is also applicable to the generating station owned by a company formed as special purpose vehicle for such generating station, in accordance with Rule 3(1)(b) of the Electricity Rules, 2005, which provides that unit or units of such generating station identified for captive use and not the entire generating station is required to satisfy the conditions contained in Rule 3(1)(a).

13. The Commission observes that in the present case, there is only one captive user i.e. Petitioner No. 2 (M/s. Piccadily Hotels Pvt. Ltd.), in respect of its unit of 5 MW only, which is apparent from the Connectivity Agreement executed amongst Petitioner No. 1 (M/s. Piccadily Agro Industries Ltd.), Respondent No. 2 (HVPNL) and Discoms as well as Banking Agreement executed amongst Discoms, Respondent no. 2 and Petitioner No. 1, which specifically refers to M/s. Piccadily Hotels Pvt. Ltd. as captive user. Further, the metering was done at the one user end only and not at the end of M/s. Piccadilly Agro Industries Ltd., thereby clearly indicating a case of single captive user. Thus, it is well established that out of four generating units aggregating to 17 MW, only one unit of 5 MW was declared for use by single captive user i.e. M/s. Piccadily Hotels Pvt. Ltd. The equity requirement of 26%, provided in Rule 3(1)(a) (i) of the Electricity Rules, 2005, was accordingly examined with respect to a single unit

of 5 MW only on proportionate basis considering explanation (1) of the Rule 3(1)(b) of the Electricity Rules, 2005. Equity capital requirement for one unit of 5 MW, in proportion to all the units aggregating to 17 MW, was reduced to 29.41% (5/17*100). The equity capital owned by Petitioner No. 2 (M/s. Piccadily Hotels Pvt. Ltd.) in Petitioner No. 1 (M/s. Piccadily Agro Industries Ltd.), was presumed towards captive user unit of 5 MW only. Thus, as against the requirement of 26% equity ownership criterial out of 29.41% equity of captive unit (26x29.41/100 = 7.65%), the captive user (Petitioner No. 2 -M/s. Piccadily Hotels Pvt. Ltd.), was holding 14.57% equity. In case, total plant capacity of 17 MW is considered for determination of captive case, the plant of the Petitioner will not qualify for the equity ownership criteria of 26% provided in Rule 3(1)(a)(i) of the Electricity Rules, 2005. The connectivity agreement and banking agreement executed with Petitioner no. 1 is supported by the metering arrangements keeping injection point as Sub-Station and drawl point as petitioner no. 2 i.e. Piccadily Hotels Pvt. Ltd.. Thus, the claim of the Petitioner (s) to include the electricity consumed by the Piccadilly Agro Industries for running its distillery unit, sugar mill in the consumption of the single captive user i.e. Piccadilly hotels, is untenable. The Commission is of the considered view that the power actually injected in the grid and the energy drawn from the grid is liable to be taken into consideration, for determination of captive status of a generating unit. Haryana Grid Code Regulations, 2009 and Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 specifies the metering point for the Generating Station at the outgoing feeder of power station switchyard. Therefore, behind the meter generation and its utilization cannot be verified, in the present case.

Thus, it is established beyond doubt that only one unit of 5MW has to be considered for determining its captive status with one captive user i.e. Petitioner No. 2 (M/s. Piccadily Hotels Pvt. Ltd.).

14. The Commission has also referred to the 'Procedure for verification of captive status of such generating plant, where Captive Generating Plant and its Captive User (s) are located in more than one state', issued by Central Electricity Authority, Ministry of Power, Government of India on 10.02.2025. The relevant extract of the same are reproduced below:-

*"**6.7 Test of proportionality for Group Captive User [As per 2nd provisio of clause (a) (ii)***

of sub-rule (1) of Rule 3of Electricity Rules, 2005]:

(i) <u>The test of proportional consumption in case of the Group Captive Users</u> except Cooperative Society, shall be on actual energy consumption by Captive Users, determined on an annual basis and in proportion to the shares in ownership of the

power plant within a variation not exceeding ten percent. In order to calculate the proportionate energy consumption requirement of Captive Users a term called Unitary Qualifying Ratio (UQR) is used, which is the ratio of percentage of total consumption by Captive Users (Y) and the percentage of total ownership of Captive Users in the CGP (X).

…..

6.8 In case of generating station owned by a Company, which is formed as a Special Purpose Vehicle (SPV), the following points are provided;

(i) The Unit of the SPV, shall be identified for captive purpose, and shall be intimated to the Verifying Authority, the concerned Distribution Licensee and RLDC/SLDC, at the beginning of the Financial Year.

(ii) In case of the CGP identified for captive use as per the provision under clause (b) of sub-rule (1) of Rule 3 of the Electricity Rules, 2005, in a generating station owned by a Company which is formed as a Special Purpose Vehicle and has multiple generating units, the Captive User(s) shall hold in aggregate of not less than 26% of the proportionate equity share capital with voting rights as per illustration given at clause 3(1)(b) of the Electricity Rules, 2005 and consume not less than 51% of energy generated on annual basis, in proportion to the shares in ownership of the unit(s) within a variation not exceeding ten percent and from the generating unit(s) identified for captive use and not the generating station, as a whole.

(iii) SPV having more than one Captive User shall be considered as Association of Persons, for determining the test of proportionality as per the Hon'ble Supreme Court of India's said judgment dated 09.10.2023, wherein is has been held that

"……. SPVs which own, operate and maintain CGPs are an "association of persons" in terms of the second proviso to Rule 3(1)(a) of the Rules. Companies, body corporates and other persons, who are shareholders and captive users of a CGP set up by a SPV, are required to comply with Rule 3(1)(a) of the Rules read with the second proviso of the Rules."

7. Procedure for verification of Status of CGP and Captive User(s) :

……..

7.3 <u>The Applicant shall furnish an affidavit</u> as per format enclosed at SCHEDULE to the Verifying Authority enclosing therewith the details as specified in the FORMAT I, II and <u>III regarding their annual electricity generation, Captive User-wise consumption</u> and equity share holding during the year under consideration.

(Emphasis supplied)

Thus, the test of proportionality in the consumption of 51% power, has to be applied when there are more than one captive users. However, in the present case, there is a

single captive user, who have to consume the mandated 51% power. Further, the petitioner (s) were required to declare captive user-wise consumption in respect of its captive unit, which the petitioner has not declared even in the present petition.

15. The Commission has also carefully examined the case relied upon by the Petitioner i.e. Chhattisgarh State Power Distribution Company Ltd. v Chhattisgarh State Electricity Regulatory Commission and anr 2022 SCC OnLine Sc 604, wherein it has been held that joint consumption of SBIPL (parent company who had set up captive power plant) and SBMPL (sister concern of SBIPL) should not be less than 51% of the power generated. The Commission observes that in this case, the application was made by SBIPL, declaring two captive users i.e. SBIPL and SBMPL and accordingly the consumption was duly recorded and verified. However, in the present case, the agreements executed amongst the parties, specifically kept the injection point as Sub-Station and drawl point as Piccadilly Hotel at Gurgaon. Therefore, the case law cited by the petitioner (s), is not applicable to the facts of the instant case.

16. In view of the above discussions, the Commission is of the considered view that the captive status of only one unit of petitioner no. 1 was required to be determined in respect of a single captive user i.e. petitioner no. 2. Therefore, petitioner no. 2 was required to consume 51% of the power generated by captive unit of petitioner no. 1, which as per the monthly adjustment sheet sent to the petitioners by the respondent no. 1 and never objected to by the petitioners at the relevant time, is 37.24%. Therefore, the petitioner no. 2 has failed to comply with the condition no. 2 provided in Rule 3(1)(a) (ii) of the Electricity Rules, 2005. Accordingly, the exemptions and reliefs applicable to captive power plants is not applicable in the present case. The Discoms may take further necessary action for recovery of outstanding demand, as per the relevant provisions of the Act.

17. In terms of the above discussion, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 10.11.2025.

	Sd/-	**Sd/-**	**Sd/-**
Date: 10.11.2025	**(Shiv Kumar)**	**(Mukesh Garg)**	**(Nand Lal Sharma)**
Place: Panchkula	**Member**	**Member**	**Chairman**