

**BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**Petition No.471/07**

**IN THE MATTER OF:** Supply/use of electricity from captive generating plant of one unit to another unit through dedicated transmission lines

**AND**

**IN THE MATTER OF:**

1. M/s Bajaj Hindustan Ltd.  
Bajaj Bhawan,  
B-10, Sector-3,  
Jamunalal Bajaj Marg,  
Noida, Distt- Gautam Budha Nagar
2. M/s Bajaj Hindustan Sugar & Industries Ltd.  
Bajaj Bhawan,  
B-10, Sector-3,  
Jamunalal Bajaj Marg,  
Noida, Distt- Gautam Budha Nagar
3. M/s Bajaj Eco-Tec Products Ltd.  
Bajaj Bhawan,  
B-10, Sector-3,  
Jamunalal Bajaj Marg,  
Noida, Distt- Gautam Budha Nagar

: Petitioner

The following were present:

1. Sri.S.N.M Tripathi, Advisor(Technical)
2. Sri. G.K Thakur, DGM

**ORDER**

(Date of hearing 26.9.07)

(1) Sri.S.N.M Tripathi, Advisor(Technical) submitted, in the hearing, on behalf of the Petitioner that the captive generating plants set up by the Petitioner no.1&2, in the sugar mills owned by them, comply with all requirements of the Electricity Act,03 (the Act), Rules & Regulations made there under and intend to carry electricity, through dedicated transmission lines, from such generating plants to the industrial establishment being set up by the Petitioner no.3 adjacent to such captive plants. He also clarified that the captive plants were distinct from the co-generation plants for which the petitioners had agreements for supply of surplus power to UPPCL .

(2) According to the averments made by these petitioner's jointly in the petition -

1. Petitioner no.2&3 are subsidiary companies of Petitioner no.1.
2. Petitioner no.1 has existing eight sugar manufacturing units including those at Palia (Distt-Lakhimpur Kheri) and Kinnauni (Distt- Meerut) and one mill under construction at Maqsudpur (Distt-Saharanpur). These sugar units have distillery integrated to the sugar unit. These units are stated to have established integrated captive generating plant in the premises of the sugar mill.
3. The Petitioner no.2 also has one existing sugar unit at Prappur and three mills under construction including one at Kundarkhi (Distt-Gonda). The Sugar mill at Kundarkhi shall have integrated captive generating plant in the premises of the sugar mill.
4. Petitioner no.3 is setting up 'MDF and Particle Board Manufacturing' units in the vicinity of sugar mills at Palia (Distt-Lakhimpur Kheri), Kannauni (Distt- Meerut) and Kundarkhi (Distt-Gonda) and plans to use power generated from their captive generating plants through dedicated transmission lines without using transmission and/or distribution system of licensees.
5. It is stated that captive generating plants installed and owned by Petitioner no.1&2, at the premises of sugar mills, comply with section 2(8), 9 of the EA,03, Electricity (Amendment) Act,07 and Rule 3 of Electricity Rules,05.
6. The Petitioners also state that they have signed a MoU for use of power generated in such captive generating plants on the basis of terms & conditions agreed between them.
7. The Petitioners are praying to allow them use of power generated by captive generating plants set up in the sugar mills situated at Palia (Distt-Lakhimpur Kheri), Kinnauni (Distt- Meerut) and Kundarkhi (Distt-Gonda) by Petitioner no.3.
8. Regarding utilization of generation capacity, the Petitioners have made following statements that :-
  - (a) the entire power generated at such captive generating plant is consumed/shall be consumed by the Petitioners, vide Para 10(b) of the petition,

(b) the sugar mills have set up captive generating plants for use of power by sugar mill and distilleries, vide Para 9 of the petition,

(c) and any surplus power will be supplied to UPPCL under respective power purchase agreement signed by Petitioner no.1&2 with UPPCL vide Para 10(e) of the petition.

9. The Petitioner is seeking-

(i) clarification or direction that no license is required by the petitioners for use of power by the Petitioner no.3 generated by the captive plants of Petitioner 1&2,

(ii) permission/sanction/approval/exemption for consumption of power by Petitioner no.3 through dedicated transmission lines,

(iii) permission/sanction/approval/exemption for supply of power by Petitioner no.3 through dedicated transmission lines.

(3) (i) As per section 9 of the Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines provided that the supply of electricity from such plant through the grid shall be regulated in the same manner as the generating station of a generating company. Under Section-7 of the Act, any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73. The above provisions of the Act, when read together, categorically state that a person may setup a captive generating plant and no licence shall be required if it complies with the technical standards relating to connectivity with the grid.

The essential requirements of captive generating plant have been specified by the Central Government, in exercise of power conferred by section 176 of the Act in the Electricity Rules,05 vide notification dt.8.6.05 (the Rules), which must also be satisfied, in addition to aforesaid provisions of the Act, by a generating plant to qualify or to be termed as captive generating plant. According to these Rules, a captive plant may be set up by a registered co-operative society or association of persons or by a company formed as Special Purpose Vehicle (SPV) for such generating station. In case of co-operative society or association of persons, its

members or users are required to have not less than 26 percent of the ownership with plant and consume not less than 51% the generation on annual basis. A company formed as SPV 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. The Generating station of SPV may have identified capacity for captive use and the users of such generating station shall hold equity not less than 26% of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant and shall also ensure that not less than fifty one percent of the aggregate electricity generated by such captive unit(s), determined on an annual basis, is consumed for the captive use.

The Petitioner no.1&2 have set up generating plants in the Sugar Mills situated at Palia (Distt-Lakhimpur Kheri), Kinnauni (Distt- Meerut) and Kundarkhi (Distt-Gonda), termed as captive generating plants, and they intend to carry electricity from such plants to the manufacturing units of Petitioner no.3 through dedicated transmission lines. It may be inferred from the scheme of utilization of generation capacity, as brought out in para 2(8) above, that these plants resembles with SPV as conceived under the said Rules. Although, Petitioners have not substantiated before the Commission as to how these plants comply with the requirements of Rule 3 of the said Rules but they have been vested with duty, under the Act and the said Rules to ensure compliance of the essentials of formation of SPV, in respect to holding of equity and 51% consumption by the user(s) of such plants.

By seeking clarification or direction on the matter of licence, the Petitioners have exposed the question to wider ramifications as such the oral submission made on behalf of the petitioners that the said captive plants are distinct from co-generation plants can also not be ignored. If the said plants of petitioner no.1&2 are co-generation plants associated with the sugar mills having capacities for dedicated use of the sugar plants and surplus capacity of which is being/shall be supplied to the distribution company under "Uttar Pradesh Electricity Regulatory Commission (Terms

and Conditions for Supply of Power and Fixation of Tariff for sale of power from Captive Generating Plants, Co-generation, Renewable Sources of Energy and Other Non-Conventional Sources of Energy based Plants to a Distribution Licensee) Regulations,2005” then the Petitioners shall be under obligation to ensure compliance of Rule 3 of the Electricity Rules,05, so far as it concerns with SPV, to acquire the status of the captive generating plants.

- (ii) So far as consumption of power from such captive plants through dedicated transmission lines is concerned, the Petitioner must satisfy the requirements of the Act and the Rules already discussed above.
- (iii) Regarding construction, maintenance, operation & supply through dedicated transmission lines, the Commission has, in Order dt.11.6.07 passed in the matter of Pet. No.460/07, M/s Dev Priya Papers (P) Ltd. & two others, clarified that the Statutory provisions have created a right in favor of any person who is desirous to construct, maintain and operate dedicated transmission lines for supply of electricity from its captive generating plant to destination of his own use. The relevant portion of the order is reproduced below:

*“In this case, the Petitioners are envisaging construction of dedicated transmission lines for carrying electricity from the plant set up at the site of Petitioner no.1 to the load centers of Petitioners no.2&3 for their own use. The aforesaid Statuary provisions have created a right in favor of any person who desires to set up, maintain and operate a captive generating plant and dedicated transmission lines for supply of electricity to destination of his own use or the use of members or a distribution licensee or a consumer without obtaining a licence for setting up, maintaining and operating such captive generating plant and dedicated transmission lines. However, the said right is subject to Regulations made under section 42(2) of the Act,03 which shall mean UPERC (Terms & Conditions of Open Access) Regulation, 2004 and, inter alia, above mentioned provisions of the Act,03, the Amendment Act,07 and 5<sup>th</sup> Order of the Central Government. Therefore in consideration of above, the Petitioners are entitled to undertake the proposed activities.”*

(4) In view of above provisions of the Act and the Rules, no licence or permission/sanction/approval/exemption of the Commission is required on the issues raised in this petition.

(5) The petition is disposed of.

(R.D Gupta)  
Member

(P.N Pathak)  
Member

(Vijoy Kumar)  
Chairman

Lucknow; Dated: 10<sup>th</sup> Oct, 2007