

Note on Group Captive Power Generating Plant

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APRIL 2017

The Preamble to the Electricity Act, 2003 (“EA 2003”) states that the EA 2003, inter alia, was enacted to **promote transparent policies regarding subsidies and promotion of efficient and environmentally benign policies for the generation of electricity**. The EA 2003 delicensed captive generation.

Section 2(8) of the EA 2003 defines Captive Generating Plant (“CGP”) as 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 9 of the EA 2003 further provides that captive generation is de-licensed and captive power plant shall be regulated in same manner as a generating company. Section 9 of the EA 2003 has been reproduced herein below for ready reference:

“

- 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 licensee 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 subsection (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:

The Government of India vide Notification dated June 08, 2005 notified the Electricity Rules, 2005 ("**Electricity Rules**")¹. The said Electricity Rules states various provisions and requirements for the constitution of Captive and Group Captive Power Plant.

A Power Plant set up by any person to generate electricity primarily for his own use is defined as a Captive Generating Plant whereas a Group Captive Power Plant is where a Developer develops a Power Plant for collective usage of many consumers.

Rule 3 of the Electricity Rules lays down conditions for setting up a Group Captive Power Plant.

¹ An amendment is proposed to Rule 3 of the Electricity Rules. Further the Government of India Ministry of Power vide Draft Notification dated October 06, 2016 provided for Draft amendments in provisions relating to CGP in Electricity Rules ("**Draft**"), a copy whereof is enclosed herewith.

In Rule 3 of the Electricity Rules for the clause (a) of sub-rule (1), the following clause shall be substituted, namely:-

"(a) in case of a power plant –

- i. not less than twenty six percent of the ownership, **as defined in clause (c) of explanation to sub-rule (2) of rule 3**, 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 a person, association of persons, company, Special Purpose Vehicle, Partnership Firm, Body of Individuals or Body Corporate, 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;

Provided also that the electricity consumed by the Captive user from the captive generating units, over and above, 51% shall also be determined on annual basis in proportion to their share in ownership of the power plant within variation not exceeding ten percent"

In Rule 3 of the Electricity Rules, in sub-rule (2), for clause (c) to the Explanation, the following shall be substituted, namely:-

*"c. "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the **paid up equity share capital with full right such as, value of shares, sharing of profit/dividends, capital appreciation, voting rights, transfer of shares etc.** In other cases ownership shall mean proprietary interest and control over the generating station or power plant;"*



A Power Plant set up by any person to generate electricity primarily for his own use is defined as a Captive Generating Plant whereas a Group Captive Power Plant is where a Developer develops a Power Plant for collective usage of many consumers.

Rule 3 of the Electricity Rules lays down conditions for setting up a Group Captive Power Plant.

Condition 1: Plant should be set up primarily for captive consumption and a **minimum of 51% of the power generated should be used for captive consumption.**

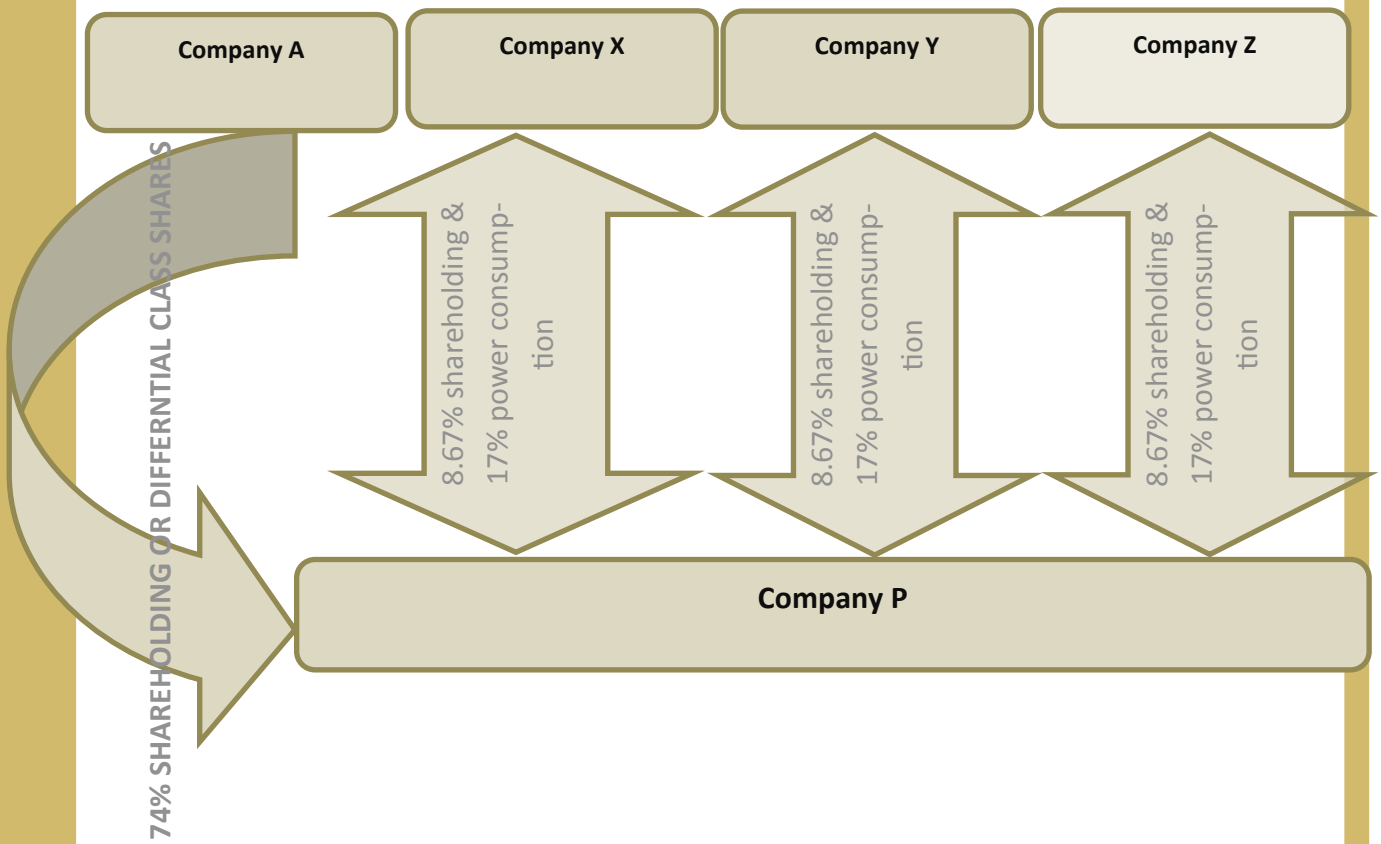
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At least **26% ownership must vest with captive user(s).**

Condition 2: In case of **association of persons**, the captive user(s) shall hold **not less than 26%** of the ownership of the plant in aggregate and **such captive user(s) shall consume not less than 51% of the electricity generated**, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation **not exceeding 10%.**

Illustration: Imagine Company A establishes and operates a power plant ("**Company P**") and Company X, Company Y and Company Z participates in equity by holding **26%** of the shares of the Company P and use about **51%** of energy produced by Company P, then Company P can be declared as group captive power plant. The balance 49% power can be sold in open access or to utility or can be consumed in proportion of shareholding by each of Company X, Company Y and Company Z. The diagram below depicts the vanilla group captive, where Company X, Company Y and Company Z holds 26% equity in ratio of 1:1:1 and consumes 51% power in ratio of 1:1:1 and balance 49% equity is held by Company A being promoter of Company P and also responsible for its operation and management and balance 49% power is sold in open access or to utility or exchange.

Group Captive Scheme structure





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