

**SHORT NOTE ON IMPACT OF ELECTRICITY (AMENDMENT) RULES, 2023
READ WITH ELECTRICITY (THIRD AMENDMENT) RULES, 2023 ON
CAPTIVE POWER ARRANGEMENT**

Matter	: Notification of Electricity (First Amendment) Rules, 2023 (“ First Amendment Rules, 2023 ”) and Electricity (Third Amendment) Rules, 2023 (“ Third Amendment Rules, 2023 ”), and implication on captive power arrangement
Applicable provisions of law	: Electricity Act, 2003; Electricity Rules, 2005; Electricity (Amendment) Rules, 2023; Electricity (Third Amendment) Rules, 2023

Amendment and analysis

Ministry of Power (“**MoP**”) had notified the First Amendment Rules, 2023 amending the Electricity Rules, 2005 (“**Rules, 2005**”). In light of some confusions with respect to the captive arrangement pursuant to the First Amendment Rules, 2023, MoP has notified Third Amendment Rules, 2023 to bring in further clarity on the issues involved. In the present note, we have analysed the impact of the amendments to the limited issue of impact on captive arrangement.

The following table summarizes the amendments notified vide the Rules:

Rules, 2005	First Amendment Rules, 2023	Third Amendment Rules, 2023
<p>3. Requirements of Captive Generating Plant.-</p> <p>(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-</p> <p>(a) in case of a power plant –</p> <p>(i) not less than twenty six percent of the ownership is held by the captive user(s), and</p> <p>(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use: Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:</p>	<p>3. Requirements of Captive Generating Plant.-</p> <p>(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-</p> <p>(a) in case of a power plant -</p> <p>(i) not less than twenty-six per cent of the ownership is held by the captive user:</p> <p>Provided that if the Captive Generating Plant is set up by an affiliate company, not less than fifty-one per cent of the ownership, is held by the captive user, in that affiliate company; and</p> <p>(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use: Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:</p>	<p>3. Requirements of Captive Generating Plant.-</p> <p>(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-</p> <p>(a) in case of a power plant -</p> <p>(i) not less than twenty-six per cent of the ownership is held by the captive user(s); and</p> <p>Provided that if the Captive Generating Plant is set up by an affiliate company, not less than fifty-one per cent of the ownership, is held by the captive user, in that affiliate company; and</p> <p>(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use: Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society:</p>

<p>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;</p>	<p>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;</p>	<p>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;</p>
<p>(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.</p>	<p>(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.</p>	<p>(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.</p>

<p>Explanation.- (1) For the purpose of this rule.-</p> <p>a. "Annual Basis" shall be determined based on a financial year;</p> <p>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;</p>	<p>Explanation.- (1) For the purpose of this rule.-</p> <p>a. "Annual Basis" shall be determined based on a financial year;</p> <p>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:</p> <p>Provided that the consumption of electricity by the captive user may be either directly or through Energy Storage System:</p> <p>Provided further that the consumption by a subsidiary company, as defined in clause (87) of section 2 of the Companies Act, 2013 (18 of 2013), of a company which is an existing captive user shall also be admissible as captive consumption by the captive user.</p>	<p>Explanation.- (1) For the purpose of this rule.-</p> <p>a. "Annual Basis" shall be determined based on a financial year;</p> <p>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:</p> <p>Provided that the consumption of electricity by the captive user may be either directly or through Energy Storage System:</p> <p>Provided further that the consumption by a subsidiary company as defined in clause (87) of section 2 of the Companies Act, 2013 (18 of 2013) or the holding company as defined in clause (46) of section 2 of the Companies Act, 2013 (18 of 2013), of a company which is a captive user, shall also be admissible as captive consumption by the captive user.</p>
--	---	---

<p>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;</p>	<p>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;</p>	<p>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;</p>
<p>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.</p>	<p>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.</p>	<p>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.</p>
		<p>(3) The captive status of such generating plants, where captive generating plant and its captive user (s) are located in more than one state, shall be verified by the Central Electricity Authority as per the procedure issued by the Authority with the approval of the Central Government.</p>

A. Vide the First Amendment Rules, 2023 a requirement when a captive power plant is being set up by an affiliate had been carved out, which has been deleted vide Third Amendment Rules, 2023.

B. The First Amendment Rules, 2023 read with Third Amendment Rules, 2023 have inserted an explanation for determination of captive status to state that a consumption by subsidiary or holding company of company which is a captive user shall also be admissible as captive consumption by that captive user. The condition in respect of setting up of a captive plant by an affiliate entity provided in First Amendment Rules, 2023 has now been deleted.

C. Captive user is defined as an end user of electricity.

D. The Third Amendment Rules, 2023 has also provided for the Central Electricity Authority to determine the captive status of the generating plants if the generating plant and its captive user (s) are located in more than one state. Such determination shall be on the basis of procedure established and notified by the Central Electricity Authority with the approval of the Central Government.

Conclusion

The Third Amendment Rules, 2023 have allowed for the consumption of subsidiary and holding company of the captive user to be admissible as if consumed by the captive user itself for the purpose of fulfilment of requirements of Rule 3 of Rules, 2005. This shall be applicable from the date of notification of the Third Amendment Rules, 2023 i.e., September 01, 2023.

September 04, 2023

ETERNITY LEGAL

Disclaimer:

This note is a copyright of Eternity Legal. No reader should act on the basis of any statement contained herein without seeking professional advice. The authors and the firm expressly disclaims all and any liability to any person who has read the report, or otherwise, in respect of anything, and if consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this report. This notes relates only to the laws of India as in force at the date hereof.

For any help or assistance please email us on contact@eternitylegal.com or visit us on

www.eternitylegal.com