

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Sub: In the matter of Petition under Section 142, 146 and 149 of the Electricity Act, 2003 read with Clause 1.29 and 1.32 of the ‘General Terms and Conditions of High- Tension Tariff’ of the Tariff Order dated 31.03.2022 in Petition No. 04/2022 and Regulations 9, 10 and 52 of the Conduct of Business Regulations 2016 seeking directions against Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. Ltd. for failure to implement this Hon’ble Commission’s Tariff Order dated 31.03.2022 in Petition No. 04/2022 in the matter Determination of Aggregate Revenue Requirement (ARR) for Control Period for FY 2022-23 to FY 2026-27 and Retail Supply Tariff for FY 2022-23**

**ORDER**

(Date of Order:29<sup>th</sup> September’ 2023)

**UltraTech Cement Limited**

**Petitioner**

**V/s**

**MP Paschim Kshetra Vidyut Vitran Co. Ltd. (West Discom)**

**Respondent**

Shri Abhishek Munot, advocate appeared on behalf of the Petitioner.

Shri Sanjay Malviya, SE appeared on behalf of the Respondent.

1. The subject petition is filed by the Petitioner seeking directions against Respondent for non-compliance of the Commission’s Retail supply tariff order for FY 2022-23 by failing to provide Captive rebate to petitioner under clause (f) of the specific terms and conditions of tariff schedule HV-3 of tariff order. The petitioner has made following prayer in its petition: -

- (a) *Hold and declare that in terms of the Commission’s Tariff Order dated 31.03.2022 in Petition No. 04/2022 and the Tariff Order dated 28.03.2023 in Petition No. 84/2022, the Petitioner is entitled New HT Connection Rebate and Captive Rebate in terms of specific terms and conditions no. (e) and (f) of the Tariff Schedule for HV – 3 category consumers;*
- (b) *Quash the Bill dated 27.02.2023 to the extent of the Captive Rebate of Rs 9,98,00,970/- (Rupees Nine Crores Ninety Eight Lacs Nine Hundred and Seventy only) withdrawn by West Discom illegally and in contravention of the Commission’s Tariff Order dated 31.03.2022;*
- (c) *Hold and declare that West Discom has failed to comply with and implement the Commission’s Tariff Order dated 31.03.2022 in Petition No. 04/2022 by withdrawing the Captive Rebate granted to UTCL from July 2022 to November 2022 and by failing to provide Captive Rebate to the Petitioner for the period after November 2022 in terms of specific terms and conditions no. (f) of the Tariff Schedule for HV – 3 category consumers;*

- (d) *Take appropriate action against West Discom for non-compliance and non-implementation of this Hon'ble Commission's Tariff Order dated 31.03.2022 in Petition No. 04/2022 more particularly in terms of Sections 142, 146 and 149 of the Electricity Act;*
- (e) *Direct West Discom to grant Captive Rebate of Rs 9,98,00,970/- (Rupees Nine Crores Ninety Eight Lacs Nine Hundred and Seventy only) to the Petitioner in terms of specific terms and conditions no. (f) of the Tariff Schedule for HV – 3 consumers in the Tariff Order dated 31.03.2022, for the period July 2022 to November 2022, along with applicable interest/ carrying cost;*
- (f) *Direct West Discom to grant Captive Rebate to the Petitioner in terms of specific terms and conditions no. (f) of the Tariff Schedule for HV – 3 consumers in the Tariff Order dated 31.03.2022 and the Tariff Order dated 28.03.2023, on a monthly basis for the period beyond November 2022, along with applicable interest/ carrying cost;*
- (g) *Pass such other or further order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.*
2. The brief facts as submitted by the petitioner in petition are as under :-
- (i) The petitioner is running a Cement plant at District Neemuch and is meeting its power requirements partly through its on-site captive generating plant (Thermal unit), onsite captive solar generating plant and from West Discom in terms of a new HT connection availed for HT/ EHT supply of 20 MVA from 21.04.2022.
- (ii) Upon availing the new HT connection, Ultra Tech Cement Ltd. (UTCL) had written to West Discom seeking captive rebate in terms of the Tariff Order. While West Discom granted UTCL Captive Rebate of Rs. 2 per unit on its incremental units, West Discom refused to grant New HT Connection Rebate.
- (iii) Aggrieved by Respondent West Discom's denial to grant Rebate for New HT Connection under clause (e) of MPERC Retail Supply Tariff Order Petitioner was constrained to approach the Commission vide Petition No. 67 of 2022.
- (iv) On 30.12.2022, the Commission passed final Order in Petition No. 67 of 2022 holding that the Petitioner is entitled to New HT Connection Rebate and further directed West Discom to comply with the Tariff Order by providing rebate to petitioner for new HT connection with effective date (Order dated 30.12.2022).
- (v) Pursuant thereto, on 23.01.2023, Petitioner wrote to West Discom seeking implementation of this Commission's Order dated 30.12.2022 in P 67/22.

- (vi) Subsequently, West Discom issued an electricity bill dated 27.02.2023 for the month of February 2023 wherein it provided the rebate for New HT Connection (for the period April, 2022 to January, 2023) in terms of the Order dated 30.12.2022 ,however in an act of non- compliance/ dis-obedience of the Commission's Tariff Order, West Discom has unilaterally and illegally withdrawn the Captive Rebate amounting to INR 9.98 Crore , which it had provided to UTCL for the period July, 2022 to November, 2022.
- (vii) Furthermore, West Discom has stopped the Captive Rebate going forward. Till date no reasons have been given by West Discom for withdrawing and stopping Captive Rebate to the Petitioner despite the fact that the Petitioner qualifies for Captive Rebate in terms of the Commission's Tariff Order.
- (viii) Petitioner has submitted that in terms of the Tariff Order, it is legally and legitimately entitled to both New HT Connection Rebate and Captive Rebate in terms of Specific Terms and Conditions(e) and (f) of HV-3 of the Tariff Order. Therefore, the action of the West Discom is completely contrary to and in violation of the Commission's Tariff Order.
3. The petitioner has raised following grounds in its petition :-

**Grounds**

- (i) *This Hon'ble Commission in its Tariff Order has provided various rebates to HV-3 category consumers to incentivize the procurement of power by HT consumers from the distribution licensee. In terms of the Specific Terms and Conditions no. (d) and (e) in the Tariff Schedule for HV – 3 category consumers of this Hon'ble Commission's Tariff Order dated 31.03.2022, depending on the status of its HT connection, a consumer can either avail Existing HT Connection Rebate or New HT Connection Rebate.*
- (ii) *Pertinently, the Tariff Order makes it expressly clear that Existing HT Connection Rebate and the New HT Connection Rebate are mutually exclusive. In other words, consumers can either avail Existing HT Connection Rebate or New HT Connection Rebate but not both simultaneously. In this regard, reference may be made to the extracts below:*
- “(d) Rebate for existing HT connection:*
- ....
- The consumer availing this rebate shall not be entitled to the rebate of new HT connection/ Green field connection under clause (e) below.***
- (e) *Rebate for new HT connection:*
- ....
- The consumer availing this rebate shall not be entitled for the rebate of incremental consumption under clause (d) above.”***

- (iii) *In addition to and independent of Existing HT Connection Rebate and New HT Connection Rebate, this Hon'ble Commission has also provided a Captive Rebate under Specific Terms and Condition no. (f) of the Tariff Schedule for HV-3 category consumers of this Hon'ble Commission's Tariff Order. In terms of Specific Terms and Condition no. (f) of the Tariff Order, captive users who have switched/ are willing to switch their captive consumption to consumption from distribution licensee are entitled to rebate of Rs. 2 per unit on the incremental consumption from licensee.*
- (iv) *However, Captive Rebate is not mutually exclusive to Existing HT Connection Rebate or New HT Connection Rebate. **In other words, unlike for Existing HT Connection Rebate and New HT Connection Rebate, a captive user who is also an existing consumer or a new consumer of the distribution licensee is entitled to avail either Existing HT Connection Rebate and Captive Rebate or New HT Connection Rebate and Captive Rebate simultaneously.** The Tariff Order does not in any manner restrict a consumer and captive user from availing Captive Rebate along with either New HT Connection Rebate or Existing HT Connection Rebate.*
- (v) *Condition No. (f) of specific terms and conditions of the Tariff Order clearly provides that:*
- (a) *Captive Rebate is applicable to consumers who are either fully or partially meeting their demand from their CGPs. UTCL meets this requirement since prior to 21.04.2022 for two years UTCL was meeting its power requirements from its onsite CGP and as a captive user had a standby support agreement with West Discom.*
  - (b) *The consumer has to indicate to the licensee that it is willing to avail supply from the licensee by switching consumption from his existing CGP. In the present case, on and from 21.04.2022 UTCL has been consuming power from West Discom under a new HT connection.*
  - (c) *Para 2 of the Note provided below the table in Specific Terms and Conditions no. (f) of the Tariff Order states as follows:*  
*“Note: 1) Captive power plant referred above shall be the “Captive Generating Plant” as defined in Rule 3 of the Electricity Rules, 2005.*  
*2) **For new consumers added during this tariff period who were fully meeting their demand from their captive power plants during the previous financial year, their consumption from DISCOM may be treated as zero for the base year.**”*
- It is clear from the above that the Tariff Order itself contemplates that a new HT consumer will be entitled to Captive Rebate.*
- (vi) *Therefore, in view of the above, it is submitted that in terms of the Tariff Order read with this Hon'ble Commission's Order dated 30.12.2022, UTCL is entitled to both:*
- (a) *New HT Connection Rebate of Rs. 1 as per Clause (e) of the Tariff Order, and*
  - (b) *Captive Rebate of Rs. 2 as per Specific Terms and Condition No. (f) of the Tariff Order.*

- (vii) *However, despite being aware of the factual and legal position, West Discom has withdrawn the Captive Rebate granted to the Petitioner from July 2022 to November 2022 and has failed to provide Captive Rebate from November 2022 onwards. This is after UTCL was constrained to approach this Hon'ble Commission seeking New HT Connection Rebate which was also initially denied by West Discom.*
- (viii) *It is pertinent to mention herein that in the Tariff Order dated 28.03.2023 for FY 2023-24, this Hon'ble Commission has continued the New HT Connection Rebate and Captive Rebate till 31.03.2024, entitling the Petitioner to both rebates for FY 2023-24 as well*
- (ix) *It is submitted that from West Discom's actions, it is clear that it does not want to comply with the Tariff Order. Till date no reasons have been given by West Discom for retrospective withdrawal of Captive Rebate. It is submitted that such retrospective withdrawal of Captive Rebate is without the authority of law and patently contrary to this Hon'ble Commission's Tariff Order. Initially West Discom rightly understood that UTCL is entitled to Captive Rebate and accordingly provided the said rebate from July 2022 to November 2022. However, the sudden withdrawal of Captive Rebate by West Discom in February 2023 only after this Hon'ble Commission held and directed West Discom to provide New HT Connection Rebate to the Petitioner vide its Order dated 30.12.2022, makes it clear that West Discom is deliberately flouting this Hon'ble Commission's Tariff Order and has no intention of complying with this Hon'ble Commission's Tariff Order. Such conduct of the West Discom is an affront to the majesty of this Hon'ble Commission and ought to be dealt with an iron hand.*
- (x) *West Discom's actions have constrained UTCL to, once again, approach this Hon'ble Commission under Sections 142, 146 and 149 of the Electricity Act. In terms of the said provisions of the Act, non-compliance of orders or directions of this Hon'ble Commission is a punishable offence. The facts of the present case make it clear that West Discom, has failed to comply with and implement this Hon'ble Commission's Tariff Order read with Order dated 30.12.2022 which entitles the Petitioner to grant of rebate for both New HT Connection as well as the Captive Rebate.*
- (xi) *Additionally, in terms of Clause 1.29 of the Tariff Order, this Hon'ble Commission is empowered to issue directions to West Discom to implement/ give effect to the provisions of the Tariff Order. Further, in terms of Clause 1.32 of the Tariff Order this Hon'ble Commission alone has the jurisdiction to determine any disputes regarding the interpretation of the Tariff Order. Hence, this Hon'ble Commission has the jurisdiction to adjudicate the present dispute and issue directions/ take action against West Discom.*
- (xii) *UTCL reserves its right to make additional submissions during the course of hearing, raise additional grounds and file additional submissions, if required. Petitioner further reserves its right to amend, modify, alter or vary any of the*

*pleadings and prayers in the present Petition, it the need so arises.*

4. At the motion hearing dated 06.06.2023, after having heard the petitioner, the petition was admitted. Petitioner was directed to serve notice to the Respondent. The Respondent was directed to submit response thereafter and serve copy thereof to the Petitioner simultaneously.
5. Vide affidavit dated 12.07.2023, the Respondent submitted its reply to the subject petition, whereby following broad submissions/contentions were made :-
  - i. *That, the Petitioner, M/s Ultra Tech Cement Limited (UTCL) is HT consumer of Madhya Pradesh Paschim Kshetra Vidyut Vitran Company, Indore (West Discom) and is also availing power supply by its thermal captive generating plant and captive solar plant.*
  - ii. *That, the Petitioner had stand-by electricity connection of 5000 KVA which was surrendered by the petitioner and took a fresh electricity connection of 20,000 KVA from West Discom on April-2022.*
  - iii. *That, the Petitioner has applied for captive rebate as per clause no. (f) of the “Specific Terms and Conditions mentioned Tariff Schedule under HV-3 of Tariff Order FY 2022-23. As per the said clause Captive Rebate has been allowed to the Petitioner by West Discom. The relevant clause of Tariff Order 2022-23 is reproduced by the Respondent.*
  - iv. *That, After availing Captive Rebate the Petitioner has approached to the West Discom for getting NSC Rebate (New Connection Rebate) referring Clause no. (e) of the “Specific Terms and Conditions mentioned Tariff Schedule under HV-3 of Tariff Order FY 2022-23. The relevant Clause of the Tariff Order is also reproduced by the Respondent.*
  - v. *Since the Petitioner is already availing Captive Rebate, the answering respondent has denied to provide NSC Rebate as the Petitioner had standby connection of 5000 KVA on the same premises which is akin to a permanent connection. And as per 2<sup>nd</sup> proviso to*

*Clause no. (e) of the “Specific Terms and Conditions” mentioned Tariff Schedule under HV-3 of Tariff Order FY 2022-23 new connection on the permanently disconnected premises shall only be eligible for such rebate, if, the application for new service connection on such premises is received not before the expiry of six months from the date of its permanent disconnection.*

- vi. *That, the Petitioner has approached to the Hon’ble commission vide Petition no. 67/2022 to allow him NSC Rebate in light of Clause no. (e) of the “Specific Terms and Conditions” mentioned Tariff Schedule under HV-3 of Tariff Order FY 2022-23.*
- vii. *That, the Hon’ble commission has identified that, the electricity connection of the Petitioner is a New HT Connection and directed to respondent i.e. West Discom to allow NSC Rebate to the Petitioner vide order dated 30.12.2022 under petition no. 67/2022.*
- viii. *That, the West Discom has honored and complied the order given by Hon’ble Commission and allowed NSC Rebate to the Petitioner’s Energy bill from the date of connection.*
- ix. *It is submitted that, vide Hon’ble Commission order dtd. 30.12.2022, Petitioner connection has now been identified as New HT connection. Since, the Captive Rebate is an incremental kind of rebate under which the current month Captive Generation units are compared with the base year Captive Generation units, captive rebate which has already given has been withdrawn. Further, in the scenario-table mentioned under clause no. (f) of the “Specific Terms and Conditions mentioned Tariff Schedule under HV-3 of Tariff Order FY 2022-23 the Rs. 1/- unit rebate in energy charges will be allowed as per clause (d) specific terms & conditions (i.e. incremental rebate) and Rs. 2/- unit rebate on incremental units (i.e. Captive rebate).*
- x. *That, as per the Clause (d) of the “Specific Terms and Conditions” mentioned Tariff Schedule under HV-3 of Tariff Order FY 2022-23 the consumer availing this rebate is*

*not entitled for NSC Rebate. The relevant clause of the Tariff Order 2022-23 is reproduced as under:-*

- (d) Rebate for existing HT connections: A rebate of Rs. 1 per Unit in energy charges is applicable for incremental monthly consumption w.r.t corresponding month of FY 2015-16. For any new consumer served during and after FY 2015-16, the base months for calculation of incremental monthly consumption shall be the first 12 months subsequent to the month of availing the connection. The incremental consumption for any month shall be worked out considering the consumption of the corresponding base month.*

*The consumer availing this rebate shall not be entitled to the rebate of new HT connection/ Green field connection under clause (e) below.*

- xi. That, the same para is also mentioned under clause (e) of “Specific Terms and Conditions” where it is clearly mentioned that **“The consumer availing this rebate shall not be entitled for the rebate of incremental consumption under clause (d) above.”** Since, the Petitioner’s connection has been identified as a New Connection, the Petitioner is not entitled to avail Captive Rebate as there is no any criteria has been given under Clause (f) of “Specific Terms and Conditions” in which Captive Rebate and NSC Rebate may be allowed simultaneously.*
- xii. It is further submitted that, for determining Captive Rebate as per clause (f), one should determine incremental rebate first as captive rebate depends upon incremental rebate. Since, the Petitioner is getting NSC rebate, the incremental rebate will not be determined therefore, Captive rebate will also not be determined.*



xiii. *That, the Petitioner is already getting monthly NSC rebate on each unit consumed from West Discom. If Captive Rebate is also given to the petitioner, the dual rebate will be allowed on the same units which is not correct.*

xiv. *It is also submitted that, the Petitioner is incorrectly interpreting the clauses issued by Hon'ble Commission and the answering respondent has always complied the Tariff Order issued by Hon'ble Commission time to time and the direction given under petition no. 67/2022 has also been complied.*

xv. *In view of above, the petition to the extent it is challenging the non-compliance of Tariff order is not maintainable.*

6. At the hearing held on 18.07.2023, the Counsel for the Petitioner informed that reply of Respondent is received by him on 13.07.2023 and therefore requested for one week time to file the rejoinder. The Commission granted one week time to petitioner to file rejoinder and directed to serve copy thereof to the Respondent simultaneously. Petitioner filed a rejoinder dated 07.08.2023 before the Commission, whereby, it reiterated the issues of petition and made following broad submissions :

***Petitioner's Rejoinder***

- i. *West Discom's contentions are untenable, both in law and fact. The submissions are contrary to this Hon'ble Commission's Tariff Order as detailed more specifically hereinafter.*
- ii. *In terms of the Tariff Order, while determining the tariff for retail supply of electricity by distribution licensees in Madhya Pradesh, this Hon'ble Commission has provided various rebates to HV – 3 category consumers to incentivise procurement of power from the distribution licensees, viz.:*
  - i. *Rebate to existing HT connections in terms of Clause (d)*
  - ii. *New HT connections in terms of Clause (e) and*
  - iii. *Captive Rebate for consumers demonstrating reduction in captive consumption and incremental consumption from distribution licensee.*
- iii. *West Discom's contention that the Petitioner is not entitled to Captive Rebate since it is already availing New Connection Rebate and the Tariff Order does not permit grant of Captive Rebate and New Connection Rebate simultaneously [Para 6(a) above] is incorrect and based on an erroneous interpretation of this Hon'ble Commission's Tariff Order. In this regard, it is submitted that:*

*In terms of Clause (d) and (e) of Tariff Schedule for HV – 3 category*

consumers in the Tariff Order, a consumer is entitled to avail either Existing HT Connection Rebate or New Connection Rebate, but not both.

- (a) However, Clause (f) which provides for Captive Rebate **does not make it mutually exclusive to either Existing HT Connection Rebate or New Connection Rebate**. In other words, on a holistic reading of Clauses (d), (e) and (f) of the Tariff Order, clearly a consumer is entitled to avail:

(i) Captive Rebate and Existing HT Connection Rebate

OR

(ii) Captive Rebate and New Connection Rebate, depending on the nature of his connection. This is further evident from the following underlined extracts of this Hon'ble Commission's Tariff Order:

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- (b) In terms of the above emphasised extracts of Clause (f) of the Tariff Order new consumers i.e., consumers with new connections are entitled to Captive Rebate. A consumer with New HT Connection who demonstrates reduction in captive consumption and corresponding incremental consumption from Discom is entitled to Captive Rebate.
- (c) However, in a scenario where a consumer demonstrates higher incremental consumption from the Discom than the reduction in its captive consumption, then he is entitled to:
- (i) Captive Rebate of Rs. 2 on the reduction in captive generation, and
- (ii) New HT Connection Rebate of Rs. 1 on the incremental units consumed from Discom which are over and above the incremental units corresponding to reduction in captive generation.
- (d) Nowhere does the above extracted Clause (f) state that New HT Connection Rebate and Captive Rebate are not to be provided simultaneously. The reference to 'clause d' in the above underlined portions of the extract is only a reference to the rate of rebate applicable on the incremental units consumed from Discom (i.e., Rs. 1). Reference to 'clause d' does not imply that Captive Rebate can only be provided simultaneously with Existing HT Connection Rebate as is sought to be contended by West Discom.
- (e) Had it been the intention of this Hon'ble Commission to limit simultaneous grant of Captive Rebate to Existing HT Connection Rebate only, then there was no reason for this Hon'ble Commission to provide Note 2 to the Table in the above extract specifying that for new consumers base year consumption from Discom shall be treated as nil.
- (f) Hence, West Discom's submissions are patently incorrect.
- iv. As regards West Discom's contentions that since Petitioner is availing New Connection Rebate there is no incremental consumption and hence no captive rebate is payable, and that granting Captive Rebate over and above New Connection Rebate will amount to double rebate on the same units of electricity (Para 4(b) & (c) above), it is submitted that the same are patently incorrect both in fact and in law. In this regard, it is submitted that:
- (a) In terms of Scenario 5 set out by this Hon'ble Commission in the methodology for Captive Rebate (extracted above), to avail Captive Rebate and New

*Consumption Rebate, the Petitioner needs to demonstrate:*

- (i) *Reduction in captive consumption corresponding to incremental consumption from Discom, and*
- (ii) *More incremental units consumed from Discom than the corresponding reduction in captive generation.*

*In other words, to avail New HT Connection Rebate over and above Captive Rebate, the Petitioner needs to demonstrate that its incremental consumption from West Discom is higher than the corresponding reduction in its captive generation/ consumption.*

(b) *In this regard, it is noteworthy that in FY 2022-23:*

- (i) *The Petitioner has consumed incremental units from West Discom every month since the Petitioner's base year consumption is 0 units.*
- (ii) *For the months of June 2022, August – September 2023 and November – February, 2023 the Petitioner has consumed more units from the West Discom than its reduction in captive generation/ consumption.*

*In this regard, a Table setting out details of the Petitioner's captive generation/ consumption in FY 2022-23 along with units consumed from West Discom is annexed hereto and marked as **Annexure P-1**. Further, copies of Form G detailing total units consumed by Petitioner from its captive generation during FY 2022-23 is annexed hereto and marked as **Annexure P-2 (Colly)**. Further, copies of electricity bills for FY 2022-23 demonstrating units consumed from West Discom are also annexed hereto and marked as **Annexure P-3 (Colly)**.*

(c) *The Petitioner has further calculated the Captive Rebate and New HT Connection Rebate in terms of the methodology provided by this Hon'ble Commission in the Table above. The methodology provided by this Hon'ble Commission ensures that there is no double rebate on the same units of electricity. By directing that New HT Connection/ Existing HT Connection Rebate is granted only on the incremental units consumed from Discom which are over and above the reduction in captive generation/ consumption, this Hon'ble Commission has ensured that Captive Rebate and New HT Connection/ Existing HT Connection Rebate is not provided on the same units of electricity.*

(d) *Therefore, West Discom's contention that Petitioner is not entitled to New HT Connection Rebate is false, misleading, and based on an erroneous understanding of the Tariff Order.*

v. *It is submitted that as per the calculations (set out in detail in Annexure P – 1 to the present Rejoinder), the Petitioner is entitled to Captive Rebate of Rs. 19,66,21,008/- (Rupees Nineteen Crores Sixty Six Lacs Twenty One Thousand and Eight only) and New HT Connection Rebate of Rs. 3,43,82,296/- (Rupees Three Crores Forty Eight Lacs Eighty Two Thousand Two Hundred and Ninety Six only) for the period FY 2022-23. In total, the Petitioner is entitled to Rs. 23,10,03,304/- (Rupees Twenty Three Crores Ten Lakhs Three Thousand Three Hundred and Four only) from West Discom towards Captive Rebate and New HT Connection Rebate.*

vi. *Instead, West Discom has withdrawn Captive Rebate amounting to INR 9,98,00,970/- (Rupees Nine Crores Ninety Eight Lacs Nine Hundred and Seventy only)*

*which it had provided to UTCL for the period July 2022 to November 2022 and has only provided New HT Connection Rebate to the Petitioner for FY 2022-23 (Rs. 13,26,92,800/-). It is submitted that the Petitioner is also entitled to Captive Rebate and New HT Connection Rebate for FY 2023-24 in terms of this Hon'ble Commission's Tariff Order dated 28.03.2023 which is being illegally denied by West Discom. Hence, appropriate directions be issued to West Discom to ensure compliance of the Tariff Order dated 28.03.2023 as well.*

- vii. Therefore, clearly West Discom has failed to implement this Hon'ble Commission's Tariff Order. Further, West Discom's Reply demonstrates its intention of not complying with the Tariff Order. Hence, this Hon'ble Commission ought to act against West Discom for wilful and intentional non-compliance of this Hon'ble Commission's Tariff Order.*
- viii. In view of the above and the calculations annexed to the present Rejoinder, it is evident that West Discom's contentions are meritless and deserve to be rejected. The Petition ought to be allowed and the reliefs sought by the Petitioner ought to be granted the Hon'ble Commission*
- ix. The Petitioner reserves its right to file a detailed para-wise Reply should the need arise later during the proceedings. Further, the Petitioner reserves its right to add, alter, amend and/ or supplement the present Rejoinder, if needed, at a later stage of the proceedings.*

7. Vide affidavit dated 10.08.2023, Respondent furnished response to the rejoinder submitted by the Petitioner. Brief of the response by Respondent is as under:-

- (i) That, the Petitioner has applied for captive rebate as per clause no. (f) of the "Specific Terms and Conditions" of Tariff Schedule HV-3 of Tariff Order FY 2022-23. As per the said clause Captive Rebate has been allowed to the Petitioner by West Discom earlier.
- (ii) That, after getting captive rebate as per Clause no. (f) the "Specific Terms and Conditions" Petitioner has approached to the West Discom for getting NSC Rebate (New Connection Rebate) referring Clause no. (e) of the "Specific Terms and Conditions" of Tariff Schedule under HV-3 of Tariff Order FY 2022-23.
- (iii) Since the Petitioner was already availing Captive Rebate, the answering respondent has denied to provide NSC Rebate as the Petitioner had standby connection of 5000 KVA on the same premises which is akin to a permanent connection.
- (iv) That, the Petitioner has approached to the Hon'ble commission vide Petition no. 67 of 2022 to allow him NSC Rebate in light of Clause no. (e) of the "Specific Terms and Conditions" of Tariff Schedule under HV-3 of Tariff Order FY 2022-23.
- (v) That, the Hon'ble Commission has identified that, the electricity connection of the Petitioner is a New HT Connection and directed to respondent i.e. West Discom to

allow NSC Rebate to the Petitioner vide order dated 30.12.2022 under petition no. 67 of 2022.

- (vi) That, in compliance to the order passed by Hon'ble Commission the answering respondent has already given NSC rebate of Rs. 18,06,85,903/- to the petitioner from April 2022 to July-2023 on their energy consumption from West Discom as per Clause no. (e) of the "Specific Terms and Conditions" of Tariff Schedule under HV-3 of Tariff Order FY 2022-23.
- (vii) That, as per clause no. (e) of the "Specific Terms and Conditions" of HV-3 Tariff Schedule of Tariff Order FY 2022-23, the consumer availing this rebate is not entitled for rebate of incremental consumption under clause (d). The relevant clause of Tariff Order 2022-23 is reproduced as under:-  
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- (viii) That, the petitioner is seeking captive rebate by mentioning the clause no. (f) which is in-contravention to the said clause, as in the scenario-table of clause no. (f) of the "Specific Terms and Conditions" of HV-3 Tariff Schedule of Tariff Order FY 2022-23 it is clearly mentioned that **Rs. 1/- unit rebate in energy charges will be allowed as per clause (d) of specific terms & conditions (i.e. incremental rebate)** and Rs. 2/- unit rebate on incremental units (i.e. Captive rebate). The relevant clause of Tariff Order 2022-23 is reproduced as under: -----
- (ix) It is submitted that the scenario table is the only criteria for calculation of Captive rebate to be allowed and in the same table it is clearly mention that the clause (d) will be applicable for calculation of incremental consumption. Further, as per the clause (d) the base months will be the first 12 months subsequent to the month of availing the connection and the petitioner has availed the current connection on. Dated 23.04.2022. The relevant clause of Tariff Order 2022-23 is reproduced as under:----
- (x) That, the petitioner has enclosed the calculation of captive rebate as **Annexure P-1 of the rejoinder** under which the rebate has been calculated on incremental units and which is self-explanatory that for allowance of captive rebate the incremental units are needed to be compared.

- (xi) Further, in the Para no. 9, the petitioner is mentioning their eligibility for NSC rebate of **Rs. 3,43,82,296/-** by comparing consumptions from Discom's and their Captive generation, which in turn calculated on "Incremental Consumptions" but as per the order passed by Hon'ble commission under petition no. 67 of 2022, the NSC Rebate has to be allowed as per Clause no. (e) of the "Specific Terms and Conditions" of Tariff Schedule under HV-3 of Tariff Order FY 2022-23 and as per the order of the Hon'ble commission answering respondent has given NSC Rebate of **Rs. 13,26,92,800/-** during FY 2022-23.
- (xii) That, the amount of captive rebate and NSC rebate (which is an incremental rebate) mentioned under Para 9 and calculation statement in **Annexure P-1** of the rejoinder provided by petitioner strongly proves that the Incremental rebate mentioned under Clause (d) is a crucial element for calculation of Captive rebate.
- (xiii) That, it is evidently proven that the Incremental rebate mentioned under Clause (d) is a crucial element for calculation of Captive rebate Clause no. (f) of the "Specific Terms and Conditions" of Tariff Schedule under HV-3 of Tariff Order FY 2022-23. Therefore, allowance of captive rebate with NSC rebate will work as dual rebate on same units.
- (xiv) That, as the petitioner's connection was identified as a new connection and has already been found eligible for NSC Rebate under petition no. 67 of 2022 therefore, the petitioner is not eligible for Incremental Rebate as per clause no. (d) And for Captive Rebate in which the incremental rebate plays a crucial role in calculation.
- (xv) In view of above, the petition to the extent it is challenging the non-compliance of Tariff order and allowance of Captive Rebate is not maintainable and should be summarily rejected.
8. Further, respondent vide letter dated 21.08.2023 had made additional submission as per following details:
- A) Details of pleadings in reply regarding Captive Rebate.:-**
- i. That, the Hon'ble Commission laid down the criteria/rules /procedure for calculation of Captive Rebate under Clause (f) of the "Specific Terms and Conditions" of Tariff Schedule under HV-3 of Tariff Order FY 2022-23. In the clause (f), the scenario table has also been given for better understanding of methodology to be used for calculation

of Captive rebate where it is clearly mentioned that the clause (d) will be applicable for calculation of incremental consumption. These scenarios has further been explained in the same clause by comparing incremental consumption from Discom and reduction in captive generation of consumer.

- ii. That, it is clearly mentioned in the clause (f) that the clause (d) will be used for calculation of incremental consumption by comparing their base year consumption from Discom. The base year consumption may be treated as “Zero” for new consumers added during the tariff period who were fully meeting their demand from their captive power plants during the previous financial year. But there is no any criteria/rule/procedure has been given in the said clause where clause (e) of the “Specific Terms and Conditions” of HV-3 Tariff Schedule of Tariff Order will be used for calculation of Captive Rebate.
- iii. That, as per the Clause (d) of the “Specific Terms and Conditions” of HV-3 Tariff Schedule of Tariff Order FY 2022-23, the consumer availing this rebate (i.e. rebate on incremental unit) is not entitled for NSC Rebate.

**B) Details of pleadings in reply regarding NSC Rebate.:-**

- i. That, the Petitioner has applied to West Discom for captive rebate as per clause no. (f) of the “Specific Terms and Conditions” of Tariff Schedule HV-3 of Tariff Order FY 2022-23. As per the said clause Captive Rebate has been allowed to the Petitioner by West Discom. After availing the same, the Petitioner has approached to the West Discom for getting NSC Rebate (New Connection Rebate) referring Clause no. (e) of the “Specific Terms and Conditions” of Tariff Schedule under HV-3 of Tariff Order FY 2022-23.
- ii. Since the Petitioner was already availing Captive Rebate, the answering respondent has denied to provide NSC Rebate as the Petitioner had standby connection of 5000 KVA on the same premises which is akin to a permanent connection.
- iii. That, the Petitioner has approached to the Hon’ble commission vide Petition no. 67 of 2022 to allow him NSC Rebate in light of Clause no. (e) of the “Specific Terms and Conditions” of Tariff Schedule under HV-3 of Tariff Order FY 2022-23.
- iv. That, **the Hon’ble Commission has identified that, the electricity connection of the**

**Petitioner is a New HT Connection and qualifying the requirement of clause (e). Therefore the Hon’ble Commission has directed the respondent i.e. West Discom to allow NSC Rebate as per Clause no. (e) of the “Specific Terms and Conditions” of HV-3 Tariff Schedule of Tariff Order FY 2022-23 to the Petitioner vide order dated 30.12.2022 under petition no. 67 of 2022..**

- v. That, in compliance to the order passed by Hon’ble Commission under the petition no. 67 of 2022, the answering respondent has given NSC rebate of Rs. 18,06,85,903/- to the petitioner from April 2022 to July-2023 on their energy consumption from West Discom as per Clause no. (e) of the “Specific Terms and Conditions” of HV-3 Tariff Schedule of Tariff Order FY 2022-23.
- vi. **That, it is clearly mentioned in clause no. (e) that “*The consumer availing this rebate shall not be entitled for the rebate of incremental consumption under clause (d) above.*”**

**C) Calculation of total rebate if Captive rebate {as per clause (f)} is allowed to the petitioner with already availed NSC Rebate {as per clause (e)}**

- i. That, the petitioner is already availing NSC Rebate as per clause (e) as per order passed by Hon’ble Commission under the petition no. 67 of 2022. Further, the petitioner is also pleading to the Hon’ble Commission to allow Captive Rebate which is adjacent to the incremental rebate. Therefore, if captive rebate is allowed, the double rebate will be allowed to the petitioner on the same unit which is not correct.
- ii. For better understanding a calculation sheet is being produced here in which of total rebate (Incremental Rebate, Captive Rebate, and NSC Rebate) has been taken for computation of the energy charges per unit after the rebate. Further, in this calculation sheet the Incremental Rebate and Captive Rebate has been taken from the ***Annexure P-1*** as given by petitioner in the rejoinder of the petition.
- iii. That, the petitioner is pleading to allow Captive rebate as per clause (f) which is mentioned in the Table-A under column no. 4 & 5 and the petitioner has already availed NSC rebate which is mention in the column no. 6. As the captive rebate is calculated with incremental rebate only, the double rebate will be allowed to petitioner if Captive



rebate {as per clause (f)} is given because the consumer is already availing NSC rebate as per clause (e).

**D. Total rebate (including Captive rebate, Incremental rebate and NSC rebate) with respect to Power Purchase Cost of West Discom as approved by Hon'ble commission under Tariff Order of FY 2022-23**

- i. That, the Hon'ble Commission vide petition no. 04 of 2022 for Determination of Aggregate Revenue Requirement (ARR) for Control Period for FY 2022-23 to FY 2026-27 and Retail Supply Tariff for FY 2022-23 has admitted the power purchase cost of West Discom is Rs. 4.48.
- ii. That, it is submitted that the energy charges derived after providing all rebates is lesser than the power purchase cost considered by the Hon'ble commission in the prevailing tariff order.
- iii. Therefore, the answering respondent is most respectfully submit that the captive rebate should not be allowed to the petitioner.

It is therefore, prayed that in the light of the above submissions, the petition filed by the petitioner may kindly be dismissed.

9. Subsequently, petitioner had filed written submission vide letter dated 23.08.2023. The broad submissions are as under :-

- (a) *Since UTCL is a new consumer having availed a new HT connection from 21.04.2022, UTCL has consumed incremental units from West Discom every month in FY 2022-23 since the base year consumption for UTCL is 0.*
- (b) *In June 2022, August – September 2023 and November – February, 2023 UTCL has consumed more incremental units from West Discom than its reduction in captive generation/ consumption.*

**Commission's Observations and Findings**

10. The Commission perused the submissions made by the parties. As per the petitioner's submission the dispute arose due to the fact that Respondent has denied the petitioner's request for providing captive rebate for FY 2022-23 and FY 2023-24 on the premise that petitioner is not entitled to Captive Rebate since it is already availing New Connection Rebate and that the

Tariff Orders in vogue do not permit for Captive Rebate and New Connection Rebate simultaneously and allowance of captive rebate with NSC (new service connection) rebate will work as dual rebate on same units.

11. The petitioner in its submission stated that Captive Rebate is not mutually exclusive to existing HT Connection Rebate or New HT Connection Rebate and therefore, a captive consumer who is an existing consumer or a new consumer of Distribution licensee is entitled to avail either existing HT connection rebate and captive rebate or new connection rebate and captive rebate simultaneously.
  
12. The respondent in its submission stated that incremental rebate mentioned under clause (d) of specific terms and conditions of tariff schedule for HV-3 category of Retail supply tariff order for FY 22-23, is a crucial element for calculation of captive rebate under clause (f) of aforesaid terms and conditions. As per submission of respondent, the allowance of captive rebate with NSC (new service connection) rebate will therefore work as dual rebate on same units. Further, in the instant case, petitioner's connection was identified as a new connection and has already been found eligible for incremental rebate as per the Commission's order dated 30<sup>th</sup> December, 2022 in petition no 67 of 2022. The petitioner is therefore not considered eligible by the respondent for incremental rebate as per clause (d), and thereby for captive rebate in which the incremental rebate plays a crucial role in calculation.
  
13. Apropos of the Commission's earlier order dated 30/12/2022 in P. No 67 of 22 filed by this petitioner (UTCL) the Commission held that petitioner meets the qualifying requirement for rebate for new HT connections with effective date under 2<sup>nd</sup> proviso to condition (e) of specific terms and conditions of tariff schedule for HV-3 category of Retail supply tariff order for FY2022-23. In compliance to the Commission's aforesaid order, the respondent West Discom had provided the rebate for new HT connection with effective date for the period (April 22 to January 23), albeit, it had withdrawn the captive rebate provided to petitioner for the period commencing July 22 to Nov 22 on following premises :-
  - i) The petitioner is not entitled to Captive Rebate since it is already availing New Connection Rebate,
  - ii) Clause (f) of the Specific Terms and Conditions in the Tariff Schedule for HV-3 consumers of the Tariff Order does not provide for grant of New Connection Rebate and Captive Rebate simultaneously,

- iii) Captive Rebate depends on incremental consumption,
- iv) Since Petitioner is availing New Connection Rebate there is no incremental consumption and hence, no Captive Rebate is payable and,
- v) Granting Captive Rebate over and above New Connection Rebate will amount to double rebate on the same units of electricity.
14. The Commission in its retail supply tariff order for FY 2022-23 and FY 2023-24, inter-alia, other rebates continued with following rebates to HV3 category consumer under specific terms and conditions :-
- i. Rebate for existing HT connections as per Clause (d) ;
  - ii. Rebate for new HT connections as per Clause (e) and;
  - iii. Rebate for Captive power plant consumers as per clause (f)
15. While allowing the rebate to existing HT connections and new HT connections, this issue has been settled in aforesaid tariff orders. Out of two rebates namely for existing and new connection, consumer will be entitled to avail only one rebate i.e either rebate as per clause (d) or (e). However, scheme for rebate for captive power plant consumer given under clause (f) of specific terms and conditions for HV 3 consumers as per retail supply tariff order FY 2022-23, clearly stipulates that HV 3 consumers can avail New connection rebate and Captive rebate simultaneously. Thus clause (e) and (f) are not mutually exclusive. The scheme of rebates under clause (d), (e) and (f) of specific terms and conditions for HV 3 consumers as per retail supply tariff order FY 2022-23 are reproduced below:
- (d) ***Rebate for existing HT connections:*** *A rebate of Rs. 1 per Unit in energy charges is applicable for incremental monthly consumption w.r.t corresponding month of FY 2015-16. For any new consumer served during and after FY 2015-16, the base months for calculation of incremental monthly consumption shall be the first 12 months subsequent to the month of availing the connection. The incremental consumption for any month shall be worked out considering the consumption of the corresponding base month.*  
*The consumer availing this rebate shall not be entitled to the rebate of new HT connection/ Green field connection under clause (e) below.*
- (e) ***Rebate for new HT connections:*** *A rebate of Rs 1 per Unit or 20% whichever would be less is applicable in energy charges for new connection for the consumption recorded. The rebate shall be allowed upto FY 2022-23 from the date of connection for such new projects for which agreements for availing supply from licensee are finalized during and after FY 2016-17.*  
*Provided that no rebate shall be applicable for connections obtained by*

virtue of change in ownership in existing connection or by reconnection.

Provided also that new connection on the permanently disconnected premises shall only be eligible for such rebate, if, the application for new service connection on such premises is received not before the expiry of six months from the date of its permanent disconnection.

**(f) Rebate for Captive power plant consumers:-**

*Applicability: The rebate shall be applicable to consumers-*

- i. *Who have been meeting their demand either fully or partially during FY 2016-17 and/or FY 2017-18 and/or FY 2018-19 and/or FY 2019-20 and/or FY 2020-21 and/or FY 2021-22 through their captive power plants located in Madhya Pradesh.*
- ii. *The rebate shall be applicable upto FY 2022-23 from the date of request submitted by the consumer to the Licensee during and after FY 2017-18. The consumer shall be required to apply to the Licensee for the rebate indicating that he would be willing to avail supply from Licensee by switching consumption from his existing captive power plant.*
- iii. *The base year shall be the financial year preceding the year during which the consumer has applied for switching consumption from his captive power plant to the licensee. e.g., If a consumer applies for switching his consumption from captive power plant to Licensee in August, 2018, then his base year for calculation of incremental consumption would be FY 2017-18.*
- iv. *Who have recorded an incremental consumption i.e., an increase in the units consumed from the Licensee in any month of the current year (FY 2022-23) compared to the same month in base year.*
- v. *A rebate of Rs 2 per unit shall be applicable on incremental units of the consumer subject to reduction in captive generation as per the methodology given below:*

	Base Year		Current Financial Year		Incremental Consumption from DISCOM	Reduction in Captive Generation	<u>Units eligible for Rs 1/unit rebate in energy charges as per Clause (d) of specific terms &amp; conditions</u>	Units eligible for Rs 2/ Unit rebate on incremental units
	Consumption from DISCOM (Units)	Captive Generation Units	Consumption from DISCOM (Units)	Captive Generation Units	Units	Units	Units	Units
	(A1)	(B1)	(A2)	(B2)	$X=A2-A1$	$Y=B1-B2$		
Scenario 1	100	90	110	90	10	0	10	0

Scenario 2	100	90	110	80	10	10	0	10
Scenario 3	100	90	110	70	10	20	0	10
Scenario 4	100	90	100	80	0	10	0	0
Scenario 5	100	90	120	80	20	10	10	10

Note:-

1) Captive power plant referred above shall be the “Captive Generating Plant” as defined in Rule 3 of the Electricity Rules, 2005.

2) **For new consumers** added during this tariff period who were fully meeting their demand from their captive power plants during the previous financial year, their consumption from DISCOM may be treated as zero for the base year.

$X$  = the incremental consumption recorded by the captive consumer in any month of the current financial year compared to the same month of base year.

And

$Y$  = the quantum of reduction in units consumed from captive plant (self-consumption) achieved by the captive consumer in any month of the current financial year compared to the same month in the base year. For all other cases of incremental consumption i.e when  $X > Y$ , the existing rebate of Rs 1/unit in energy charges will be applicable on  $X-Y$  units (as per the rebate for incremental consumption given in clause d in the Specific Terms & Conditions for HV-3).

**Scenario 1:** There is no reduction in Captive Generation but only incremental consumption from DISCOM, hence a rebate of Rs 1/unit in energy charges is applicable on incremental consumption from DISCOM (as per the rebate for incremental consumption given in clause d in the Specific Terms & Conditions for HV-3).

**Scenario 2:** The incremental consumption from DISCOM is due to the reduction of captive consumption by same quantum of units hence it will attract a rebate of Rs 2 per unit on incremental units.

**Scenario 3:** There is higher reduction in Captive Generation as compared to incremental Consumption from DISCOM hence incremental units consumed from the DISCOM as shown in the table, shall qualify for a Rebate of Rs 2 per unit.

**Scenario 4:** There shall not be any rebate due to absence of incremental Consumption from DISCOM irrespective of reduction in Captive Generation.

**Scenario 5:** This scenario depicts higher incremental consumption from DISCOM ( $X$ ) than reduction in Captive Generation ( $Y$ ) hence units corresponding to  $(X-Y)$  shall qualify for rebate of Rs 1/unit in energy charges (as per the rebate for incremental consumption given in clause d in the Specific Terms & Conditions for HV-3) while units  $Y$  shall qualify for Rebate of Rs 2 per unit.

16. The table given in clause (f) is indicative and therefore mentions only clause (d) for sample calculation. However Note 2 below the table clearly allows eligibility of new consumers, as

well lays down the method of calculation of eligible units for rebate of Rs.1. In the instant case, petitioner who was fully meeting his demand from his captive plant during previous financial year (FY2021-22) and availed new HT connection from 21/04/2022 and its consumption for base year has to be considered as “zero” for captive rebate as per HV-3 clause (f) of tariff order. By virtue of being a new HT consumer, he is also entitled to avail benefits of New Connection rebate owing to his incremental consumption over and above the reduction in Captive consumption from Respondent against the base year consumption.

17. The Commission has specified methodology to determine Captive rebate under clause (f) of specific terms and conditions of tariff schedule HV-3. The methodology table illustrates how **Captive and new connection rebates** or **Captive and existing connection rebates** can be determined simultaneously on increased consumption without allowing double rebate on same unit consumed by the consumer. In light of the explanation provided in Note -2 below the aforesaid table which provides that *“For new consumers added during this tariff period who were fully meeting their demand from their captive power plants during the previous financial year, their consumption from DISCOM may be treated as zero for the base year”*, it is clarified that units eligible for Rs 1/unit rebate for existing or new connection in energy charges could be as per Clause (d) or ( e ) of specific terms & conditions as the case may be and accordingly the said table be referred to.
18. Accordingly, the Petition is allowed and the Respondent is directed to comply with the provisions in accordance with specific terms and conditions (e) and (f) of tariff schedule HV 3 category of Retail supply tariff order for FY 2022-23 and FY 2023-24 by providing captive rebate to petitioner in addition to new connection rebate on the eligible units with effective date.

With above directions, the petition is disposed of.

**(Prashant Chaturvedi)**  
**Member**

**(Gopal Srivastava)**  
**Member (Law)**

**(S. P. S. Parihar)**  
**Chairman**