

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APPEAL NO. 72 OF 2016
&
APPEAL NO. 100 OF 2016**

Dated: **06 .05.2022**

**Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

APPEAL NO. 72 OF 2016

In the matter of:

Jindal Steel & Power Limited
Jindal Centre,
12, Bhikaji Kama Place,
New Delhi – 110006.
(Through Mr. Kamal Agrawal)

....Appellant

Vs.

(1) Chhattisgarh State Electricity Regulatory Commission
Through its Secretary
Shanti Nagar, Irrigation Colony,
Raipur – 492001.

(2) Raigarh Ispat Udyog Sangh
C/o Zeon Steel Private Limited,
121, O.P. Jindal Industrial Park,
Gharghora Road, Punjipatara,
Raigarh – 496 001.
Chhattisgarh.

....Respondent(s)

Counsel for the Appellant (s) : Mr. Sanjay Sen, Sr. Adv.
Ms. Divya Chaturvedi
Mr. Saransh Shaw
Ms. Mandakini Ghosh
Mr. Pranav Sood
Mr. Manish Kharbanda

Counsel for the Respondent (s) : Mr. Anand K Ganesan
Ms. Swapna Seshadri
Mr. Aditya Dubey for R-1

Mr. Amit Kapur
Mr. Vishrov Mukherjee
Ms. Aparajita Upadhyay
Mr. Damodar Solanki for
R-2

APPEAL NO. 100 OF 2016

In the matter of:

Jindal Steel & Power Limited
Jindal Centre,
12, Bhikaji Kama Place,
New Delhi – 110006.
(Through Mr. Kamal Agrawal)

....Appellant

Vs.

(1) Raigarh Ispat Udyog Sangh
C/o Zeon Steel Private Limited,
121, O.P. Jindal Industrial Park,
Gharghora Road, Punjipatara,
Raigarh – 496 001.
Chhattisgarh.

(2) Chhattisgarh State Electricity Regulatory Commission
Through its Secretary,
Shanti Nagar, Irrigation Colony,
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Ms. Aparajita Upadhyay
Mr. Damodar Solanki for
R-1

Mr. Anand K Ganesan
Ms. Swapna Seshadri
Mr. Aditya Dubey for R-2

J U D G M E N T

PER HON'BLE MR SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The instant batch of appeals have been filed by the Jindal Steel & Power Limited ("Appellant" or "JSPL") challenging the Order dated 21.01.2016 ("Impugned Order") passed in Petition no. 47/2015(M) and the Order dated 01.10.2015 passed by Chhattisgarh State Electricity Regulatory Commission (in short "CSERC" or "Respondent Commission" or "State Commission") in (Review) Petition No. 7/2015(M), (Impugned Review Order) and the Tariff Order dated 23.12.2014 ("Impugned Tariff Order") passed in Petition No. 12/2014(T).

2. The Appellant, in Appeal No. 72 of 2016, challenged the Impugned Order on the grounds that the State Commission has rejected its claim for: -

- (a) determination of cost of generation of power from Dongamahua Captive Power Plant ("DCCP") owned by the Appellant,

- (b) supply of power from DCPD to the consumers of Jindal Industrial Park (“JIP”), in the absence of firm surplus power from Appellant’s Raigarh CPP, to meet the required load pattern of the area,
- (c) not considering the remand directions, to evaluate the availability of surplus power from Appellant’s Captive Power Plant (“CPP”), rendered by this Tribunal vide its judgment dated 07.03.2014 in Appeal No.89 of 2012, and
- (d) allowing the Appellant to source power from the Dongamahua CPP to meet its obligation as distribution licensee under the relevant provisions.

3. The Appeal No. 100 of 2016 has been filed by the Appellant being aggrieved by the decision of the State Commission and stated that: -

- (a) the State Commission has not complied by the directions of this Tribunal passed, vide judgment dated 07.03.2014 in Appeal No.89/2012 (RIUS vs. CSERC & Anr.)
- (b) the State Commission has not determined the pattern of surplus power available from the Captive Power Plant after meeting the requirement of captive load of the steel plant and load pattern in Jindal Industrial Park.
- (c) this Tribunal order dated 07.03.2014 has not complied in respect to evaluate the availability of surplus power from Appellant’s CPP.
- (d) the State Commission erred in placing reliance upon the Appellant’s application dated 25.01.2005 for grant of Licence

to distribute electricity and its earlier order dated 29.09.2005 granting licence to the Appellant for distribution of electricity to hold that Appellant is bound to supply power from its CPPs including the Dongamahua CPP, which was commissioned much later i.e. in the year 2010.

- (e) the Appellant is free to source power from the Dongamahua CPP, however, the said supply from Dongamahua CPP cannot be called as obligation in terms of its distribution licence.
- (f) in the absence of Power Purchase Agreement (“PPA”) between the generator and distribution licensee, the Appellant’s Dongamahua CPP cannot be held to be obligated to supply power.
- (g) the tariff of Rs.2.50/- per kWh is not a ‘determined’ tariff i.e. tariff determined in accordance with the provisions of Sections 61, 62 and 64 of the Electricity Act read with the CSERC (Terms and Conditions for determination of tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012 (“CSERC Tariff Regulations, 2012”). Appellant was subjected to such “default” tariff as it had not filed the segregated accounts from the year of grant of licence i.e. FY 2005-06, however, the Appellant had filed the segregated accounts for the period FY 2011-12 onwards when the Impugned Order dated 23.12.2014 was passed.

(h) reduced the tariff to Rs.2.50 per kWh as a penalty for failing to file the segregated accounts from the year of licence i.e. FY 2005-06 and allowing such undetermined tariff to continue vide the Impugned Review Order in spite of submission of the segregated accounts of Appellant's distribution business from the year of licence i.e. FY 2005-06.

4. Considering that the issues emerging out from the two captioned appeals are same, the two captioned appeals are taken up together for adjudication.

PARTIES

5. The Appellant – Jindal Steel & Power Limited, is a generating company within the meaning of Section 2(8) of the Electricity Act and has captive generating plants of capacity of 284 MW (“Raigarh CPP”) at Patrapali Village, Ghargoda Tehsil, Raigarh District Raigarh and 540 MW (“DCPP”) at Dongamahua, Chhattisgarh.

6. Respondent No. 1 - Raigarh Ispat Udyog Sangh (“RIUS”) is an association comprising of members who are mainly engaged in business relating to steel production and having their industrial units in JIP.

7. Respondent No. 2 – Chhattisgarh State Electricity Regulatory Commission was constituted by the State Govt. of Chhattisgarh (“State Government”) vide Notification No.3190/S/E/2002 dated 23.08.2002 read with Notification No. 432/R/353/03 dated 11.05.2014 and discharges functions enjoined upon it under Section 86 of the Electricity Act.

FACTS OF THE CASE (APPEAL NO. 72 OF 2016)

8. The Appellant vide its proposal dated 28.12.2001, under the provisions of the Industrial Policy of the State Government, submitted the scheme for establishing Jindal Industrial Park for supplying power to the industrial units set up in the JIP area, the State Government, on 26.04.2002, granted approval, under Section 28 of the Indian Electricity Act, 1910 ("1910 Act"), to the Appellant for setting up the industrial park (JIP) and accordingly, on 23.10.2002, a MOU was signed between the Chhattisgarh State Industrial Development Corporation ('CSIDC') and the Appellant for setting up the JIP. Through this Memorandum of Understanding ("MOU"), the CSIDC agreed to provide incentives and facilitate clearance etc., necessary for setting up JIP.

9. Subsequently, on 29.01.2003, the State Government issued its No Objection Certificate (NOC) to the Appellant for supply of power by its Raigarh CPP, the only CPP owned by the Appellant and under operation at that time, to industrial units in JIP. Pursuant to this, the Appellant entered into Power Purchase Agreement with various consumers having industrial units in the Jindal Industrial Part for a period of 5 years.

10. The State Government, on 28.02.2004, on the recommendation of Chhattisgarh State Electricity Board (CSEB), granted approval to the Appellant under section 68 of the Act, for laying transmission and distribution lines for supply of power up to 299 MW to the 70 industrial units which were being set up in the first phase of JIP, subsequently, the Appellant connected supply of electricity to such industrial units which had installed their plant and equipment requiring supply of electricity. Pertinent to note here that on 26.05.2003, the new law i.e. the Electricity Act, 2003 (the Act 2003) was enacted by the Parliament and the Appellant commenced the supply of electricity w.e.f. 01.03.2004, the

date after the enactment of the Act, to the industrial units which were already set up in JIP, without seeking a distribution licence, as required, from the State Commission.

11. It was on 25.01.2005, in compliance with the provisions of the Act and the directions given by the State, the Appellant, submitted an application to State Commission for grant of license to distribute electricity in the JIP.

12. In the said application, as submitted by the Applicant, it had proposed to supply electricity from its CPP at Raigarh and Jindal Power Limited's IPP at Tamnar, Raigarh which was set up as an IPP by one of the group companies of the Appellant considering that the capacity of the Raigarh CPP will be inadequate to supply the 299 MW of projected load. The relevant extract of the application is as under:

“The power required by the Units in JIP shall be supplied by JSPL from its power plant at Raigarh. The requisite No Objection permission for Distribution of Electricity to the units in the JIP has been granted by GoCG vide letter No. 601 dated 28.02.04.

[...]

Form – 1A

Form of Application for grant of Licence for Distribution of Electricity in the State of Chhattisgarh

...

10. Particulars of demand/supply

(a) Expected demand in area of supply : 400 MVA (300 MW) on full implementation of the Industrial Park.

(b) Source of obtaining power :

i. 120 MVA (90 MW) from Jindal Steel & Power Ltd., Captive Power Plant at Patrapali Village, Ghargoda Tehsil, Raigarh District.

ii. 280 MVA (210 MW) from the proposed 1000 MW capacity power plant of Jindal Power Ltd., Tamnar Village, Ghargoda Tehsil, Raigarh District.

(c) Own Generation: Yes”

13. On 29.09.2005, the State Commission granted licence to the Appellant for distribution of electricity to the proposed 70 industrial consumers of the JIP with certain conditions with a maximum demand not exceeding 299 MW and at a rate not more than Rs. 2.50 per unit or at the supply rate of CSEB for that category of consumers, whichever is lower. Pertinently, in its licence order dated 29.09.2005, State Commission had not identified any particular source of power for the Appellant to procure power for the purpose of supply to its distribution license area i.e. JIP. The relevant extract is reproduced here under:

“1. ... The proposal is to supply to JIP 400 MVA (300 MW) of electricity on full implementation of the industrial park for which 120 MVA (90 MW) is proposed to be supplied from the existing captive power plant at Raigarh and 280 MVA (210

MW) from the proposed 1000 MW capacity power plant being put up by the applicant company in the same district.

[...]

16. ...The fact remains that the petitioner had an undertaking with the State Government for setting up a private industrial estate (for which the Government had even acquired private land and allocated to him); laying the necessary transmission and distribution facilities, and supplying electricity to the industries which may be set up in the industrial estate from his captive power plant. ... A distribution licensee may procure electricity from any source subject to the terms and conditions of his license and under the regulatory supervision of the Commission. However, the applicant's plea has all through been supply of power from his captive power plant."

14. The State Commission by another order dated 29.11.2005 added some more conditions in the licence were:

- (a) The license is valid for a period of 25 years.
- (b) JSPL is required to abide by all the relevant provisions of the Electricity Act, 2003, the National Electricity Policy, Indian Electricity Rules, 1956 and Electricity Rules, 2005, as amended from time to time.
- (c) JSPL is required to abide by the general conditions of licence as given in Chapter-III, the conditions applicable to a distribution licensee as given in Chapter-V of the Licence Regulations and the relevant provisions of all the

regulations issued or as may be issued by the State Commission, from time to time.

- (d) JSPL is required to lay necessary distribution lines and put up sub-stations at its own cost in the two villages for supply of electricity to any person who may apply for it.
- (e) The consumers of the area other than area of JIP (i.e., other consumers in the villages of Tumdih and Punjipathra of Raigarh District) shall have the option to choose between JSPL and CSEB or its successor entity(ies).
- (f) Existing tariff (Rs. 2.50 per unit) being charged from the industrial consumers in the designated area of JIP shall continue to be charged by JSPL, till the tariff for supply is determined by the State Commission.
- (g) For determination of tariff in the area of supply, JSPL is required to file the necessary application under Section 64 of the Electricity Act, 2003 and Clause 10 of the CERC (Details to be furnished by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 (**“Tariff Procedure Regulations”**) before the State Commission on or before 31.03.2006, and thereafter, in terms of the provisions of the said Regulations.

15. It is important to note here that the order dated 29.09.2005 passed by the State Commission was assailed by the Appellant, being aggrieved of the findings regarding supply of power to its consumers prior to grant of the Distribution License, before this Tribunal through Appeal No. 27 of 2006, CSEB and Chhattisgarh Vidyut Manav Abhiyanta Sangh also

challenged by way of Appeal Nos. 179 & 188 of 2005, respectively, CSEB also challenged the order dated 29.11.2005 by way of Appeal No. 16 of 2006. These appeals were disposed of by this Tribunal vide common judgment dated 11.05.2006.

16. However, this Tribunal's judgment dated 11.05.2006 was challenged by way of Civil Appeal Nos. 4268, 3996 and 4529 of 2006 by CSEB, Chhattisgarh Vidyut Manav Abhiyanta Sangh and JSPL, respectively which were disposed of by the Hon'ble Supreme Court vide its judgment dated 19.09.2007 and remanded the matter to this Tribunal for fresh consideration.

17. This Tribunal vide its judgment dated 07.05.2008, in Appeal Nos. 179 and 188 of 2005 and 16 and 27 of 2006, set aside the Orders dated 29.09.2005 and 29.11.2005 passed by the State Commission granting Distribution Licence to JSPL, as also the order imposing penalty on JSPL.

18. The judgment dated 07.05.2008 rendered by this Tribunal was again challenged by way of Civil Appeal Nos. 3607-3610 of 2008 titled "*JSPL v. CSERC & Ors.*", an industrial consumer, Tirumala Balaji Alloys Pvt. Ltd. also filed Civil Appeal Nos. 4104-4107 of 2008 challenging the Judgment dated 07.05.2008, and the Hon'ble Supreme Court vide its Order dated 16.05.2008 admitted Civil Appeal Nos. 3607-3610 of 2008 and stayed the operation and effect of the judgment dated 07.05.2008 passed in Appeal Nos. 179 and 188 of 2005 and 16 and 27 of 2006, vide which this Tribunal had cancelled the Distribution License granted to JSPL, to this effect JSPL resumed the supply of power to its industrial units from 17.05.2008.

19. Meanwhile, in pursuant, to the licence, the Appellant filed a tariff petition (Petition No.28/2006) seeking permission to file tariff petition only for 2007-08, on the ground that it has not been possible for them to segregate the accounts for the distribution business as required in the Electricity Act and the State Commission may fix only maximum ceiling of tariff for retail sale of electricity for promoting competition among distribution licensee, the State Commission vide its order dated 17.07.2006 agreed on the first prayer, however, plea for fixation of only maximum ceiling of tariff for retail sale of electricity was not accepted.

20. Subsequently, the Appellant, on 13.12.2006, filed an amendment application (Petition No.33/2006) seeking review of order dated 17.07.2006, however, the State Commission vide order dated 29.01.2007 partially allowed the amendment petition by fixing maximum ceiling tariff for the two villages falling under JSPL's jurisdiction, however, upheld its decision dated 17.07.2006 for the industrial consumers reiterating that JSPL shall file tariff petition and directed the Appellant to file the completed tariff petition, the tariff for new industrial consumers (with whom no agreement was existing at that time), was also fixed at Rs. 2.50/kWh but with the additional provision that the alternate tariff may be as determined by the Commission.

21. Being aggrieved, JSPL filed Appeal Nos. 34 & 96 of 2007 titled "Jindal Steel & Power Limited v. CSERC & Anr." challenging the review order dated 29.01.2007 passed by the State Commission in Petition No. 33 of 2006, which were disposed of by this Tribunal on 04.10.2007, observing as under:

“16. At the outset, we would like to point out that so far JSPL has not filed any application for determination of its tariff as directed by the CSERC. The appellant, JSPL had set up the plea that it is not possible to segregate its accounts for distribution business and steel business. The contention was rightly rejected by the CSERC. It is not denied that it was one of the terms of the grant of distribution license to JSPL that it shall file an application for determination of tariff. Having obtained the license on the specific condition that it shall apply for determination of tariff, the appellant cannot be allowed to violate the conditions of license. Section 42 of the Act casts a duty on a distribution licensee to supply electricity in accordance with the provisions of the Act. Section 45 of the Act ordains that the price to be charged by a distribution licensee for supply of electricity by it in pursuance of Section 43 of the Act shall be in accordance with such tariff as is fixed from time to time by the Commission and conditions of his license. Therefore, distribution licensee is under a statutory obligation to supply electricity in consonance with the following two conditions:-

- i) supply of energy shall be as per the tariff fixed;*
- ii) supply of energy shall be in accordance with the conditions of distribution license.*

17. The appropriate Commission has been empowered under Section 62(1) of the Act to fix tariff in accordance with the provisions of the Act.”

22. Separately, the Appellant vide letter dated 11.09.2007 informed the State Commission that since the capacity of its steel plant has increased, it would be difficult to supply power to JIP from its CPP as per its commitment, further stating that:

(a) In absence of surplus power, tariff determination for power generated from JSPL's CPP will no longer be required.

(b) The 1000 MW power plant of JPL, a wholly owned subsidiary of JSPL, will commence generation in October 2007 and JSPL intends to procure 100 MW power from JPL under Section 62(1)(a) of Electricity Act, 2003.

(c) JSPL seeks permission to procure 100 MW power on short-term basis for a period of nine months w.e.f. October 2007 at Rs. 2.80 per unit.

(d) JSPL seeks permission to initiate competitive bidding under Section 63 of the Electricity Act, 2003 for procuring power.

23. In response to the request of JSPL, the State Commission vide communication dated 27.09.2007 to JSPL allowed JSPL to procure 100 MW power from JPL at a rate of Rs. 2.80 per unit for the period October 2007 to June 2008, further, noting that JSPL has long-term agreement with its consumers to provide power at Rs. 2.50 per unit.

24. The Appellant filed its tariff petition No. 23 of 2008 on 14.02.2008, for determination of tariff for FY 2008-09, and again resubmitted on 30.07.2008 as the State Commission found the petition to be incomplete on the ground that the accounts were not segregated, however, revised application was again found to be with many

discrepancies, the Appellant, in response to discrepancies pointed out by the State Commission, on 01.11.2008 filed an application indicating its inability to submit the required data within 15 days and requested for two months' time to submit fresh application for the next year after incorporating all the observations made.

25. The State Commission vide communication dated 13.10.2008, extended the period of power purchase by JSPL from JPL from October 2008 to November 2008 at the maximum rate of Rs. 2.80 per unit.

26. Subsequently, the State Commission passed its Order dated 05.11.2008 in Petition No. 23 of 2008 pertaining to determination of tariff for JSPL for FY 2008-09, observing as under:

“3. ... The Commission is inclined to agree with the request of the applicant in view of the following:

(i) Despite a lapse of three months' time from the date of application, the Commission is not in a position to proceed with the task of determine ARR and hence tariff on account of the application being incomplete.

(ii) The financial year in respect of which the application has been filed has now only five months left. At present, we are already in the month of November and another two months' time for submission of required information will take us to Jan' 09 and then we will be left with only three months of the current financial year. Further, the Commission would also require some time to process and decide the tariff for which 120 days are permitted in the Act. Even if the Commission

expedites the process it will take about two months' time. Thus, by the time tariff is decided hardly one month time of the FY 2008-09 will be left. Thus, no purpose in going through the process of determination of tariff would be served.

(iii) At present, the consumers of the industrial park of the licensee are being supplied electricity @ Rs.2.50 per unit as per the agreements in force, some of which pertain to the period prior to the distribution licence was granted to the licensee. The present tariff is less than the Board's industrial tariff applicable for the similar type of consumers. Further, no representation has been received from any consumer of licensee regarding the said tariff. The Commission, therefore, would not like to interfere with subsisting agreements between consumers and the licensee.

In view of the above, the Commission comes to the conclusion that no useful purpose would be served in determination of tariff for the current year. The application for tariff for the year 2008-09 therefore need not be proceeded with and be filed without any decision. The licensee is directed to continue to provide electricity to all its consumers at the provisional tariff as per our order dated 29.09.05 in Petition No. 03 of 2005 and as amended by order dated 17.07.06 against Petition No. 28 of 2006 (M), irrespective of whether the subsisting agreement with consumers last till the end of financial year or not. The licensee is further directed to ensure that full and complete information as per the comments/observations communicated on the present

application is submitted in the fresh tariff application which will be for the year 2009-10 not later than end December, 2008.”

27. Thereafter, the Appellant filed its another Tariff Petition No.17/2009 for approval of Annual Revenue Requirement (“ARR”) and determination of retail tariff for distribution business for the financial year 2009-10, informed that there will be no surplus power available from its CPP because of capacity addition in its Steel Plant. The State Commission disposed of the said petition by order dated 27.06.2009. Pertinently, the State Commission vide the said order directed that:

“6.1...In the absence of segregated accounts for distribution business, the Commission at present accepts the methodology adopted by JSPL for allocation of fixed assets for its distribution business...”

10.1... In the absence of authenticated segregation of data for distribution segment of M/s JSPL, the Commission is left with no other option but to approve the gross employee expenses of Rs. 303.61 lakhs at present for estimating the expenses.

12... While analyzing the ARR, many discrepancies were noticed mainly because the accounts for the distribution and supply business have not been separated from the main business of the company... the Commission finds it difficult

to arrive at realistic ARR due to unavailability of separate accounts for the business for which license was granted.

13... Under the circumstances, in the interest of consumers the Commissions decides only to fix the maximum ceiling tariff in pursuance of the provision of Section 62(1) of the Act. This ceiling shall be as obtaining for consumers of CSPDCL in the State. The licensee shall not, in other words, charge a tariff for its consumers which is more than the tariff applicable to the same category of consumers of CSPDCL. The Commission shall undertake a true up exercise on the basis of the actual cost of supply when the next tariff petition is submitted by the licensee.

14. DIRECTIONS

(i) In accordance with the terms and conditions of the license, a separate accounting of distribution and supply business is required to be kept. This has repeatedly been brought to the notice of the licensee. The separation of accounts may be confirmed within 3 months. Failure to comply with direction will result in reduction in tariff to Rs. 2.50 per unit as is the licensee's agreement with most consumers.

.....

(ix) The licensee is directed to submit the next tariff application at the end of November, 2009 with complete information based on separate account of licensed business.”

28. In the light of the State Commission's order 27.06.2009, a new supply agreement was signed on 06.07.2009 between the Appellant and various industrial units of JIP.

29. In the order dated 27.06.2009, the State Commission has relied upon its Suo-moto order dated 18.04.2009 in respect of power purchase by CSPDCL in short term from CPPs / IPPs up to a ceiling price of Rs 2.95 per unit with 5% extra tariff for peak hours. In view of above order, the State Commission allowed JSPL to procure power from JPL at Rs. 3.0 per unit.

“5.2. As regards purchase of power from M/s Jindal Power Ltd. (JPL), the licensee has informed that the rate of purchase is Rs. 5.40 per unit and this rate has been obtained on case-I bidding basis. The matter regarding purchase of power by the licensee was separately dealt with by the Commission under section 86(1)(b) of the Act. In this case, the Commission had finally ordered that JSPL may procure power from JPL at the same rate at which JPL is supplying power to Chhattisgarh State Power Distribution Co. Ltd. (CSPDCL) w.e.f. 01.04.2009. This was a provisional order and the JSPL was advised to file a separate petition for purchase of power for the year 2009-10 under section 86(1)(b) of the Act.

The Commission in its order dated 18.04.2009 has allowed maximum base price of Rs. 2.95 per unit for supply of power to CSPDCL at a load factor of 80% and above by the captive generating plants / IPPs of the State which included JPL. The rate of power purchase for peak hours is 5% more than the rates

approved for off-peak hours. In view of above orders of the Commission, the weighted average power purchase rate of Rs. 3 per unit, is therefore admissible at present for the current year.”

30. The Appellant, separately, filed Petition No. 22 of 2010 for approval of power procurement plan (short-term plan) of JSPL for the period FY 2010-11, the State Commission disposed of the petition by its order dated 27.10.2010, approving the short-term power procurement plan of JSPL for the period FY 2010-11 and observed as under:

“1. M/s JSPL was issued licence for distribution of electricity vide order dated 29.11.2005. According to this order, the distribution licence shall be valid for a period of twenty five years from the date of issue. Further, as per this order, M/s JSPL can undertake distribution of electricity in the Jindal Industrial Park (JIP for short), limited to 70 industrial consumers with a maximum demand not exceeding 299 MW, as approved by the Government of Chhattisgarh, in Tumdih and Punjpathra villages of Gharghoda tahsil of Raigarh District and also in the remaining areas of these two villages. According to submission made by JSPL in the licence application, there was a plan to supply power to 70 industrial consumers in JIP with a maximum demand not exceeding 299 MW. The licensee i.e. JSPL has set up the industrial area (JIP) on the basis of understanding with the State Government that industries set up would be supplied surplus power available from their captive generating plant.

The order dated 29.09.2005 passed in petition No. 03 of 2005 in the matter of “application for distribution licence by M/s Jindal Steel and Power Limited” shows that, M/s JSPL, while submitting application for distribution licence has indicated that the proposal was to supply to JIP 400 MVA (300 MW) of electricity on full implementation of the industrial park for which 120 MVA (90 MW) is proposed to be supplied from the existing captive power plant at Raigarh and 280 MVA (210 MW) from the proposed 1000 MW capacity power plant being put up by the M/s Jindal Power Ltd. (JPL for short) a wholly owned subsidiary of JSPL in the same district. It is to take note that the mentioned captive generating plant of JSPL was under operation at the time of issuing licence to JSPL. Since the distribution licensee itself possessed a captive generating plant of its steel business, so the availability of power for distribution business of JSPL was ascertained. This position is also admitted in the para 2.14 of the power procurement plan submitted by applicant.

2. Subsequently, after issuing the licence, M/s JSPL took different position. In September, 2007, JSPL informed that since the capacity of their steel plant has increased and they require more power for their steel plant so it is difficult to supply power to JIP from the CPP (of JSPL) as per commitment. In the letter dated 11.09.2007, JSPL stated that “the 1000 MW IPP of Jindal Power Ltd. (JPL), a wholly owned subsidiary of JSPL, will commence generation in Oct 2007 and JSPL intends to procure 100 MW power from JPL under Section 62(1)(a) of Act.” M/s JSPL sought permission

to procure 100 MW power on short-term basis for a period of nine months w.e.f. Oct 2007 at Rs 2.80 per unit. It was also said that they want to initiate bidding under Section 63 for meeting long-term requirement of industrial park. Subsequently vide their letter dated 20th November 2007, M/s JSPL submitted an application before the Commission to permit them to initiate competitive bidding under Section 63 for procuring power. JSPL sought permission to carry out medium-term bidding process under Section 63. JSPL stated in its letter that:

“JSPL is aware of its obligations to provide reliable and uninterrupted power to its consumers and is therefore eager to enter into long-term supply agreements for procurement of power from other power producer.

In absence of surplus power, tariff determination for power generated from JSPL’s captive power plant will no longer be required.”

Three points emerge from this letter of JSPL. First, as per this letter, the existing captive generating plant of JSPL was unable to supply power for distribution business of JSPL. Second, for the first time through this letter, the JSPL showed its intention to purchase power from “other” power producers. Third, with this proposal of power procurement through bidding process, tariff determination of JSPL’s captive plant for supply of power to the distribution licensee, will no longer be required.

3. As per the provisions and spirit of Electricity Act, 2003, the Commission accorded approval and permitted JSPL to initiate bidding process. Since the bidding process could not be completed till June 2008, JSPL sought extension to purchase 100 MW power from JPL for a further period of three months (July to Sept. 2008) at Rs 2.80 per unit. In September 2008, JSPL submitted the bidding results. According to this, M/s JPL emerged as the lowest bidder quoting Rs 6.30 per unit. The proposal of JSPL to approve rate of Rs. 6.30 per unit was not accepted and tariff was not adopted. Since the period for procurement of power by JSPL from JPL on short-term basis was to complete on Sept 2008, on the request of JSPL, the Commission extended the period of short-term purchase of power by JSPL from the JPL at Rs 2.80 per unit for further period of two months. In December 2008, the Commission ordered and intimated JSPL that the result of competitive bidding is not accepted. After this, M/s JSPL sought permission for short-term purchase of power from JPL at the rate fixed by the Commission for short-term power purchase price by State distribution utility from CPPs/IPPs of the State. Presently, since then, JSPL is continuing this practice and modality of power procurement.

4. The details (table 8, page no 11) of power procurement plan submitted by JSPL shows that in the year 2008-09, M/s JSPL has purchased 496.25 MU from captive unit of JSPL at Rs 2.32 per unit and 113.54 MU from JPL at Rs 2.80 per unit. The fact submitted in power procurement plan reveals that for the year 2008-09, M/s JSPL sought permission to procure

total power (100 MW) from the JPL, but in actual it has sourced power from JSPL captive generating plant and the quantum of power received from JSPL's CPP was much more than that of power purchase quantum from JPL plant.

It is pertinent to mention that while seeking approval for short-term power purchase, M/s JSPL submitted that since the power requirement in the steel industry (of JSPL) has increased and so it may not be possible for the captive power plant of JSPL to supply power for distribution business of JSPL. But the fact submitted by applicant indicates that, in the year 2008-09, captive plant of JSPL supplied major portion of power for distribution segment of JSPL. In the year 2009-10, JSPL's captive plant did not supply power for JSPL's distribution business, but JSPL entered into an agreement dated 30.03.2009 with Chhattisgarh State Power Distribution Company Ltd. (CSPDCL) i.e. State utility for supply of 50 MW of power over and above already contracted 70 MW power from JSPL's existing captive plant for the year 2009-10 and 2010-11. During the proceeding of this case the Commission asked JSPL to clarify the position on this issue. It is noticed that there are different versions in JSPL's reply. The relevant content of their letter dated 29.07.2010 is reproduced below:

"During last few years (FY 2007-08, 2008-09 and 2009-10), the steel business of JSPL has been significantly expanded resulting into increase in consumption of power generated from captive plant. During these years, due to expansion of steel business, the power availability has

reduced because of expansion of steel capacity. As also, we have to meet commitment of power supply to the Board as per agreement of the company with the Board”

But in letter dated 19.08.2010, JSPL submitted that:

“During FY 2008-09, there was slow down in steel business and consumption of power by the steel business of JSPL was quite low in comparison to generation of power by CPP, which resulted in surplus availability of power that had been supplied to the licensed distribution business.”

JSPL has further stated that the intention of seeking permission to purchase power from JPL was to meet out the gap between demand of licensee’s distribution business and surplus power available with CPP of JSPL. In letters dated 19.08.2010 and 07.09.2010, the licensee has submitted and accepted that JSPL’s CGP had entered into a supplementary agreement with CSPDCL on 30.03.2009 for supply of additional 50 MW power.

At the time of seeking approval for short-term power purchase for the year 2008-09, JSPL had power requirement of approximately 100 MW and, JSPL sought permission for 100 MW short-term power purchase from JPL plant, which is its total requirement. This means that it wanted to procure its 100% power requirement from JPL. At that point of time M/s JSPL had submitted that the power requirement in the steel industry (of JSPL) has increased and so it may not be possible for the captive unit of JSPL to supply power for

distribution business of JSPL. Subsequently for the year 2009-10 and 2010-11, JSPL entered into 50 MW PPA with CSPDCL. The question arises that when there was no surplus power available in JSPL's CPP, how it had entered in 50 MW power supply agreement with CSPDCL for the year 2009-10 and 2010-11. Why JSPL CPP could not supply this power for JSPL distribution business. From the above observation it is clear that there was surplus power available with JSPL CPP in 2008-09, 2009-10 and also 2010-11. It is observed that the licensee is taking different position at different point of time and there are contradiction in facts submitted to the Commission. Such an attitude of licensee and its attempt to misguide Commission during quasi-judicial process cannot be appreciated. JSPL's submission in letter dated 19.08.2010 that the intention of seeking permission to purchase power from JPL was to meet out the gap between demand of licensee distribution business and surplus power available with CPP of JSPL does not appears to be correct."

31. Subsequently, the Appellant filed Petition No. 26 of 2011 for approval of long-term procurement of power through tariff based competitive bidding process under Case-I bidding framework which was disposed of by the State Commission vide its order dated 31.12.2011, observing that:

- (a) By Order dated 27.10.2010, JSPL was directed to file power procurement plan within 3 months from date of order. No such detailed plan has been submitted by JSPL.

- (b) Though JSPL has stated that due to expansion of its steel business, the CPP is not able to fulfil the requirement of stable power for distribution business on long-term basis, however, it has not been made clear that actually what minimum quantum of stable power can be supplied by JSPL. Without having a clear statement of power availability from the licensee's own sources, deciding the quantum of power which needs to be procured through long-term PPA may suffer from infirmity.
- (c) JSPL was directed to submit within one month, a detailed power requirement plan indicating the last five years actual consumption data along with the future projection, so that the long-term power to be requisitioned through bid may be assessed in a rational manner.
- (d) The petition is partially disposed of as far as it related to the approval sought for deviation from the standard bid documents. However, regarding quantum of power to be procured through bidding is left to be decided after submission of desired data by JSPL.

32. The Appellant, on 14.01.2011, also filed Petition No.06/2011 (T) for the year 2011-12 before the State Commission which was disposed of vide the tariff order dated 08.02.2012, deciding the provisional true up of FY 2009-10, determination of ARR for FY 2010-11 & FY 2011-12 and retail tariff for FY 2011-12 at Rs. 2.75 per kWh for HT Steel Industries at 33 kV, Rs. 2.85 per unit for HT Steel Industries at 11 kV and Rs. 3.30 per kWh for other HT Industries.

33. The Respondent no. 2-RIUS, challenged the tariff order dated 08.02.2012 passed by the State Commission, through an Appeal No.89/2012 (RIUS vs. CSERC & Anr.) before this Tribunal wherein vide judgment dated 07.03.2014, this Tribunal set aside the said tariff order and remanded the matter with the direction to the State Commission to pass consequential order in terms of the following: -

(a) The first issue relating to surplus power from the Captive Power Plant of Jindal Steel is decided in favour of the Appellant. The State Commission is directed to re-determine the power purchase cost as per the directions given in Paragraph-23 of this Judgment.

(b) The Second Issue regarding delay in filing the tariff petition is allowed in favour of the Appellant with the directions to the State Commission not to pass on the burden on account of delay in filing of the tariff Petition by Jindal Steel to the consumers in the form of increase in tariff due to carrying cost.

(c) The third issue regarding segregated accounts is also decided in favour of the Appellant with the directions to the State Commission not to entertain any Petition of Jindal Steel for enhancement of tariff in the event of failure to submit the segregated accounts as per the directions of the State Commission in future.”

34. It is important to note here, the observations of this Tribunal recorded under para 23 of the judgment dated 07.03.2014, as under:

“In view of the above, we are constrained to conclude that the State Commission’s finding on this issue is wrong and the

same is liable to be set aside. The State Commission should have examined the pattern of surplus power available from the captive power plant after meeting the requirement of captive load of the Steel Plant and load pattern in the licensed area of Jindal Steel and should have considered part of energy supplied in the licensed area from the Captive Power Plant of Jindal Steel. Unfortunately, this has not been done. Therefore, we remand the matter with directions to the State Commission to carry out the exercise and evaluate the energy from the Captive Power Plant that should have been booked to distribution business of Jindal Steel at the cost of the generation tariff of Jindal Steel's Captive Power Plant. The consequential relief may be passed on to the Appellant and other consumers. The State Commission should also facilitate increasing the contract demand of Jindal Steel from 1 MW to 80 MW from CSPDCL as sought by Jindal Steel for meeting the increased load of Jindal Steel. This will help in availability of continuous and sustainable supply from the Captive Power Plant to Jindal Industrial Park in future."

35. In compliance to the remand order, the State Commission vide letter dated 02.03.2015 directed JSPL to withhold the Competitive Bidding process till the time the State Commission ascertain the surplus power from JSPL's CPP in view of the Remand Judgment dated 07.03.2014.

36. Meanwhile the Appellant filed Tariff Petition being Petition no.39/2012 (T) and another Tariff Petition being Petition No.55/2012(T) for determination of the ARR for control period FY 2013-14 and

determination of the tariff for the FY 2013-14. The order disposing of both these petitions came up in appeal (Appeal Nos. 213/2013 and 214/2013) before this Tribunal and was decided by a common judgment dated 01.07.2014, relevant extract is as under:

“Consequently, the instant Appeals, being Appeal Nos. 213/2013 and 214/2013 are allowed only in part as indicated above. The State Commission is directed to pass consequential order at the earliest. No order as to costs.”

37. In view of the directions passed in Appeal No.89/2012 (RIUS vs. CSERC & Anr.), the Appellant filed a Tariff Petition No.12/2014 (T) for determination of tariff for FY 2014-15 along with revised estimates of Multi Year Annual Revenue Requirement for the licensed distribution business for the control period from FYs 2013-14 to 2015-16 and true up of ARR for FY 2012-13. In accordance with the directions, passed by the Hon'ble Tribunal vide judgment dated 07.03.2014, the State Commission was to deal *inter alia* on the following aspects: -

- (a) The determination of the availability of pattern of surplus power from the CPPs of the Appellant after meeting the requirement of captive load of the steel plant and load pattern in JIP and;
- (b) Filing of the segregated accounts of the distribution business of the Appellant in accordance with the order dated 07.03.2014 of this Tribunal.

38. JSPL, filed fresh Petition, being Petition No. 12 of 2014, on 20.01.2014 for determination of tariff for FY 2014-15 along with revised estimates of Multi-Year ARR for its distribution business for the Control Period FY 2013-14 to FY 2015-16 and true up of ARR for FY 2012-13, however, the Petition was again found incomplete as the required segregated audited account for the FY 2012-13 was not submitted with the petition, on direction, JSPL submitted some accounts before the State Commission in Petition No. 12 of 2014, thereafter, the said petition was registered on 10.03.2014.

39. The State Commission examined the Tariff Petition No. 12 of 2014, in the light of directions given by this Tribunal vide judgment dated 07.03.2014.

40. Meanwhile, the State Commission, on 12.06.2014, issued Tariff Order in Petition Nos. 5-8 of 2014 for CSPDCL for FY 2014-15 and final true-up for Previous Years of CSPGCL, CSPTCL, SLDC and CSPDCL, wherein, the State Commission observed that the load curve prepared by SLDC depicts that the injection pattern of the power supplied by JSPL to CSPDCL has wide variation, supply from JSPL is varying frequently and it is unstable / non-firm power. However, the said observation was made by the State Commission in the Tariff Petition filed by State Utilities in respect of determination of their Tariff. The State Commission's order was upheld by this Tribunal vide Judgment dated 26.05.2016 in Appeal Nos. 41 of 2015 and 67 of 2015, noting therein as under:

“10. (A)

...

(vii) We are of the considered Opinion that injection pattern of such unstable power supply causes even commercial implications, besides creating disturbance in the demand supply balance. Since the surplus power supply from JSPL has been fluctuating in nature and unstable the purchase price of non firm power cannot be equated with purchase price of firm power and has to be given treatment as in the case of purchase of infirm power and the purchase cost of such type of power has to be significantly lower than the cost of firm power. We are in agreement with the findings of the Impugned Order of the State Commission on this issue and decide this issue against the Appellant.”

41. The Respondent, RIUS, submitted its objections to Petition No. 12 of 2014 stating that:

- (a) The argument of power being unreliable and fluctuating for supply to JIP had already been rejected by this Hon'ble Tribunal in the Remand Judgment dated 07.03.2014.
- (b) JSPL had been supplying power to the consumers in JIP from its CPP till October 2007 and the claim of JSPL of the same power suddenly becoming unreliable and fluctuating after October 2007 is very strange.
- (c) JSPL's claim of there being no surplus power from CPP is baseless.
- (d) Even if it is assumed that the surplus power available from CPP is unreliable and fluctuating, the CPP is connected with the State grid at 220 kV. The State grid can definitely absorb the

alleged fluctuations (if any) of the surplus power available from CPP.

42. We fail to understand the role of the State Commission at this stage and even the objections raised by the Respondent, RIUS. The responsibility of meeting the reliable and uninterrupted power supply cannot be left to the inertia of the State Grid as it may badly affect the security of the Grid. Further, vague comments like “no surplus power available from CPP” cannot be appreciated as carries no weight to the extent that such capacity can be accurately determined in real time and in fact always available with the system operator. The State Commission is duty bound to obtain such capacity with its pattern from the appropriate authorities like SLDC.

43. The State Commission, on 21.11.2014, requested JSPL to file the requisite audited accounts by 29.11.2014, including the following in Petition No. 12 of 2014:

- (a) Unit wise installed capacity of CPP as on 01.04.2014 along with COD.
- (b) Daily generation in kWh by CPP from FY 2010-11 onwards.
- (c) Electricity consumed in kWh (daily) by captive loads from FY 2010 onwards.
- (d) Details of electricity sold (daily) in kWh from its CPP from FY 2010-11 to other then consumer at JIP.
- (e) Total electricity consumed (daily) in kWh in JIP from FY 2010-11.

44. However, it has been submitted that the Appellant failed to furnish the above information before the State Commission. The State Commission passed the Impugned Tariff Order dated 23.12.2014 in Petition No. 12 of 2014, the relevant extract is as under: -

“55. JSPL has been asked to submit the following information to have a picture of the facts regarding availability of surplus power of its CPP vide letter dated 21/08/2014 and 21/11/2014;

a) Unit-wise installed capacity of captive generating plant as on 01/04/2014 along with commercial operation date.

b) Daily generation in KWH by captive power plant from FY 2010-11 onwards.

c) Electricity consumed in KWH (daily) by captive loads from FY 2010-11 onwards.

d) Details of electricity sold (daily) in KWH from its captive power plant from FY 2010-11 to other than consumer at Jindal Industrial Park (JIP).

e) Total electricity consumed (daily) in KWH in JIP from FY 2010-11.

56. In response, M/s JSPL did not provide the data in KWH units but submitted the same in different units, hence, in absence of data it is difficult to ascertain quantum of electricity needed for supplying to JIP and quantum how much surplus energy sold by M/s JSPL to others.