

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NOS. 213 and 214 OF 2013

Dated: 1st July, 2014

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

IN THE MATTER OF

Jindal Steel and Power Limited,

having its registered office at
O.P. Jindal Marg,
Hisar – 125 005 (Haryana)

And Corporate Office at
8, Bhikaji Cama Place,
MTNL Building, 6th Floor,
New Delhi-110 066

..... **Appellant/Petitioner**

VERSUS

Chhattisgarh State Electricity Regulatory Commission,

Irrigation Colony, Shanti Nagar,
Raipur – 492 001 (Chhattisgarh)
(through its Secretary)

..... **Respondent**

Counsel for the Appellant(s) ... Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran

Counsel for the Respondent(s) ... Mr. C.K. Rai

JUDGMENT

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. Appeal No. 213/2013 has arisen out of the order, dated 12.7.2013, passed by the Chhattisgarh State Electricity Regulatory Commission (in short, the '**State Commission**'), in Petition No. 55/2012(T), whereby the State Commission has determined the Aggregate Revenue Requirement (in short ARR) for the Control Period from FY 2013-14 to 2015-16 and the Retail Tariff for FY 2013-14 for the Appellant's Distribution and Retail Business.

2. Appeal No. 214/2013 has emanated from the order, dated 10.7.2013, passed by the Chhattisgarh State Electricity Regulatory Commission (in short, the '**State Commission**'), in Petition No. 39/2012(T), whereby the State Commission has determined the Aggregate Revenue Requirement/Retail Tariff for the FY 2012-13 and True-Up for FY 2010-11 and FY 2011-12 for the distribution business of the Appellant.

3. Since the parties in the aforesaid two Appeals are same, all the facts are identical and issues involved for our consideration are same, both these Appeals are being decided together by this common judgment.

4. The relevant facts for deciding these Appeals, are as under:

- (a) that the Appellant-Jindal Steel and Power Limited-Distribution Licensee (in short '**JSPL-D**'), filed a Petition before the State Commission for determination of Annual Revenue Requirement (ARR) for the licensed Distribution Business of the Appellants for the Control Period FY 2013-14 to 2015-16, and determination of retail tariff for FY 2013-14, under Section 61, 62 and 86(1)(a) of the Electricity Act,

2003, together with the relevant provisions of the CSERC (Conduct of Business) Regulations, 2009 and CSERC (Terms and Conditions for determination of retail tariff according to Multi-Year Tariff principles and Methodology and Procedure for determination of Expected revenue from Tariff and Charges) Regulations, 2012.

- (b) that JSPL was granted a distribution license by the State Commission on 29.11.2005 for distribution and retail supply of power in the area of Jindal Industrial Park, an industrial estate established in District Raigarh, Chhattisgarh and in the area of villages Tumdih and Punjipathra of Gharghoda tahsil.
- (c) that JSPL segregated its fixed assets for its distribution business from its other businesses for the financial years 2008-09 and 2009-10 as per Clause 13 of AS-17
- (d) that for the year 2010-11, JSPL created a separate accounting centre under “Business Area 1900” in JSPL’s books of accounts for recording separately all the financial transactions relevant to the licensed distribution and retail supply business of electricity. On 30.07.2011, a fixed assets Statement and Expense Details for the year 2010-11 for the distribution business as certified by the Statutory Auditor of JSPL was submitted to the State Commission.
- (e) that JSPL vide letter, dated 18.8.2011, had undertaken that any loss or deficit incurred by the licensed business of JSPL due to maintaining the tariff at the existing levels and not applying the tariff determined by the State Commission retrospectively from the beginning of the financial year, would not be carried forward to the subsequent years.

- (f) that The State Commission passed Order dated 8.2.2012 determining the Annual Revenue Requirements for the year 2011-12.
- (g) that the Statutory Auditor, vide letter, dated 22.9.2012, attested that the Auditor is only empowered to give an Auditor's Report for the accounts of the entire Company and not for each division of the said Company.
- (h) that for the financial year 2011-12, JSPL recorded all the financial transactions relevant to the licensed distribution and retail supply business of electricity in the separate business area 1900. On 15.10.2012, JSPL submitted Auditor Certified Segregated Accounts along with Auditor Certificate to the State Commission.
- (i) that JSPL filed its Petition for Determination of ARR for Distribution Business for the year 2012-13 and Truing up for financial years 2010-11 and 2011-12 being Petition No. 39 of 2012 (T). On the basis of the segregated accounts for 2011-12 and the norms and parameters under the Tariff Regulations 2006, JSPL sought for approval of the ARR amounting to Rs. 26,339 lakhs for the year 2012-13.
- (j) that JSPL filed its impugned petition for determination of ARR for distribution business for the control period from FY 2013-14 to 2015-16 and determination of tariff for FY 2013-14 being Petition No. 55/2012(T).
- (k) that on 25.2.013, JSPL submitted a revised petition for determination of ARR for distribution business for the control period from FYs 2013-14 to FY 2015-16 and determination of tariff for FY 2013-14. JSPL sought for approval of the revenue requirements amounting to Rs.

31,140.75 lakhs in FY 2013-14, Rs. 28,599.72 lakhs in FY 2014-15 and Rs. 28,935.36 lakhs in FY 2015-16.

- (l) that the State Commission, vide impugned order, dated 10.7.2013, (which is impugned and challenged before this Tribunal in Appeal No. 214/2013), inter alia, rejected the Auditor Certified Accounts for the FY 2011-12 and determined the Annual Revenue Requirements for 2012-13 and the truing up for 2011-12.
- (m) that the State Commission, vide the impugned order, dated 12.7.2013 (the subject matter in Appeal No. 214/2013), has inter alia, rejected the segregated accounts for FY 2011-12 of JSPL and determined the annual revenue requirements for the year 2013-14.

4.1 We may clarify here that Appeal No. 213/2013 is against the impugned order, dated 12.7.2013, by which, the State Commission has rejected the segregated accounts for FY 2011-12 of the Appellant-JSPL, and determined its ARR for FY 2013-14.

5. The following grievances have been raised in these Appeals on behalf of the Appellants (JSPL):

- (i) that the State Commission failed to appreciate that the distribution licensee is entitled to the tariff on cost plus basis and the actual cost of the distribution licensees must be reflected in the tariff subject to appropriate prudence check by the State Commission. The State Commission has approved the annual revenue requirement of Rs. 23,033.37 lakhs for 2013-14, Rs. 23,503.37 lakhs for 2014-15 and Rs. 23,956.28 for 2015-16 as against the amount estimated by JSPL as Rs. 31,140.75 lakhs for 2013-14, Rs. 28,599.72 lakhs for 2014-15 and Rs. 28,935.36 lakhs for 2015-16, without rejecting the claim on appropriate prudence check.

- (ii) that the State Commission rejected the auditor certified segregated accounts submitted by the Appellant (JSPL), even though the said accounts were prepared on the basis of specially created separate cost centre “Business Area 1900” related to the distribution business of JSPL. The segregation of fixed assets and expenses into a separate business area had been certified by the Statutory Auditors and the basis for such segregation along with the certificate of the Statutory Auditors was submitted to the State Commission.
- (iii) that the State Commission failed to appreciate that JSPL is engaged in multiple businesses and the audited accounts are prepared for the entire company and cannot be prepared for each division of the Company. However JSPL had submitted the segregated accounts certified by the Auditor, who is the statutory auditor of the Company as a whole and this may be considered as equivalent to the audit of these accounts for the purposes of determination of Annual Revenue Requirement.
- (iv) that the State Commission failed to appreciate that the CSERC (License) Regulations 2004 cannot override provisions of the Companies Act, 1956. It is a well settled principle that a subordinate legislation must not only be in conformity with the provisions of the Parent Act but the same must also be conformity with any other Act. The Companies Act, 1956 do not provide for preparation of audited accounts for each division of a Company.
- (v) that the State Commission erred in reducing Gross Fixed Assets and Equity allowed to JSPL while continuing the actual debt of JSPL. Both equity and debt ought to have been reduced proportionately in case the Gross Fixed Assets were to be reduced. Therefore the debt-equity ratio as proposed by JSPL ought to have been continued even if the

Gross Fixed Assets of JSPL was reduced by the State Commission.

- (vi) that the State Commission erred in considering a normative loan on the debt-equity ratio of 88:12 even though there was no loan outstanding for JSPL. The Tariff Regulations 2006 provide that debt - equity ratio of 70:30 is to be applied if actual equity investment is equal to or more than 30% of total fixed assets. JSPL had invested equity capital to repay all the outstanding loans in financial year 2011-12 and therefore JSPL is entitled to return on equity on the actual equity balance subject to a maximum of 30%.
- (vii) that the State Commission erred in taking into consideration security deposit as Rs. 2149.70 lakhs as against the actual amount of Rs. 2043.49 lakhs without any basis and ignoring the various submissions of JSPL regarding the closing balance of 2043.49 in its Petition, during the Technical Validation Session and further in its letter dated 10.7.2013. The above erroneous consideration has further impact on the calculation of working capital and non tariff income.
- (viii) that the State Commission erred in disallowing the provision for bad and doubtful debt even though the Tariff Regulations 2012 specifically provide for a Provision for Bad and Doubtful Debt of 1% of Revenue under Regulation 66.8. Such Regulation does not leave it to the discretion of the State Commission to disallow the same in case the State Commission is of the view that there is no need to create such a provision.
- (ix) that the State Commission erred in not considering the revenue gap approved during True Up of the year 2011-12 for determining the revenue gap for the year 2013-14. The

State Commission disallowed the recovery of revenue gap for the year 2011-12 by order, dated 10.7.2012, by relying on the letter dated 18.8.2011 which was only with regard to non applicability of the tariff determined for 2011-12 from the beginning of the financial year i.e. from 1.4.2011 and does not apply to any revision of tariff due under the true up exercise.

- (x) that the State Commission erred in not allowing recovery of revised transmission charges payable by JSPL for the year 2011-12 to the transmission licensee which was beyond the control of JSPL. Further the State Commission did not allow the recovery of expenditure with regard to interest on security deposit incurred by JSPL under directions of the State Commission in Order, dated 8.2.2012.

6. We have heard Mr. M. G. Ramachandran, the learned counsel for the Appellant and Mr. C.K. Rai, the learned counsel for the Respondent. We have deeply gone through the evidence and other material available on record including the impugned order.

7. The following issues arise for our consideration:

- A. whether the State Commission was right in rejecting the segregated accounts as filed by JSPL and disallowing the various capital cost and expenses on the ground of absence of segregated audited balance sheet and accounts in regard to the distribution functions and activities of the Appellant?
- B. whether the State Commission was correct in deciding the operation and maintenance expenses for the control period only on the basis of approved expenses for the previous years i.e. 2009-10, 2010-11 and 2011-12 on grounds of non-availability of audited segregated accounts, even though

the Tariff Regulations 2012 allow the calculation of operation and maintenance expenses on the basis of unaudited accounts?

- C. whether the State Commission was correct in calculating the equity as a balance of the loan when the Approved Gross Fixed Assets was reduced on account of disallowances of the capital cost and thereby impacting the equity instead of proportionately reducing the debt and equity in the ratio of 70:30?
- D. whether the State Commission was correct in considering the debt- equity ratio allowed for the previous years even though there were no long term loans outstanding against the licensed business of JSPL in the present year and the ratio of equity to debt being more than 30%, the debt equity to be considered in the ratio of 70:30?
- E. whether the State Commission erroneously calculated the Consumer Security Deposit held by JSPL as Rs. 2149.70 lakhs as against the actual closing balance of Rs. 2,043.49 lakhs?
- F. whether the State Commission erred in considering the interest on the amount of excess security deposit as non-tariff income even though there is no excess security deposit?
- G. whether the State Commission erred in disallowing the provision for bad debts even though Tariff Regulations 2012 provide for the same?
- H. whether the State Commission erred in not allowing the recovery of the revenue gap approved during True Up for 2011-12?

- I. whether the State Commission erred in not allowing recovery of revised transmission charges and interest on security deposit approved during True up for 2011 -12?

9. Issue-wise considerations are as follows:

10. **Issue No. A - relating to Rejection of Segregated Accounts:**

10.1 On this issue, the following submissions have been made on behalf of the Appellant-JSPL:-

- (i) that the State Commission has rejected the auditor certified accounts for the FY 2011-12 submitted by JSPL with regard to its distribution business on the basis that the same did not comply with CSERC (License) Regulations, 2004. The State Commission, in its order, dated 12.7.2013, passed in Petition No. 55/2012(T) at page-III, has observed as under:

"..... On examination of the accounts submitted by JSPL during processing of the FY 2012-13 Tariff Order, the Commission noted that the accounts prepared for the distribution business were barely extractions from the audited accounts of the parent company i.e. JSPL based on certain assumptions as provided by the company management. Further, the audited accounts submitted by the JSPL did not comply with the CSERC (License) Regulations, 2004 and there was no opinion from the Auditor with respect to whether the accounts prepared gives true and fair view of the JSPL-licensed distribution business."

.....
FIXED ASSETS

.....
3.31 The Commission observed that JSPL-D has not submitted any further information in its MYT Petition for substantiating and justifying the gross fixed assets base of Rs. 3287.41 Cr. Also, the audited accounts for FY 2011-12 were not found to be in compliance with the CSERC (License) Regulations 2004 and Companies Act 1956. Therefore, the Commission did not accept the accounts submitted by JSPL-D for FY 2011-12 at the time of issuance of FY 2012-13 Tariff Order. Further, the audited segregated accounts for FY 2012-13 was not made available by the licensee along with the MYT Petition."

- (ii) that the Appellant-JSPL is engaged in several business activities, including mining of raw materials, manufacture of

iron and steel. The generation, transmission and distribution of electricity under the license granted by the State Commission came into existence because of existing licensee Chhattisgarh State Electricity Board being unable to supply in the area at the relevant time.

- (iii) that the Appellant prepares integrated annual accounts for its entire business. It had been reporting the financial information under broad business segments as per Accounting Standard AS - 17 issued by Institute of Chartered Accountants of India. The size of the distribution business of the Appellant is small compared to the overall operations of the Appellant. Further there were number of common expenses and fixed assets in the businesses of the Appellant. The segregation process was, therefore, not simple and was a continuous process.
- (iv) that the Appellant segregated its fixed assets for its distribution business from its other businesses for the FYs 2008-09 & 2009-10 as per Clause 13 of AS-17, which Clause provides the definitions of segment revenue, segment expense, segment assets and segment liabilities include amounts of such items that are directly attributable to a segment and amounts of such items that can be allocated to a segment on a reasonable basis.
- (v) that the Appellant segregated fixed assets as under:
 - (a) The accounting unit named as Jindal Industrial Park (Accounting Code 8030) was fully dedicated to the distribution business and the entire fixed assets under this unit were considered as fixed assets for distribution business. The assets of accounting unit 8030 accounted for over 90% (93.85%) of the total assets of the licensed distribution business;

- (b) The Appellant also identified several other accounting units which were directly related to the distribution business, amongst other businesses and assets. Based on its internal financial reporting system, JSPL allocated 0.886% of the fixed assets in such units to the licensed distribution business. These assets constituted the balance 6.15% of the total assets of the licensed distribution business.
- (vi) that similarly the expenses for the FYs 2008-09 & 2009-10 were segregated on the basis of the accounting units/codes which had been identified as fully dedicated to distribution business and those which can be attributable to the distribution business, amongst other businesses. **However, the State Commission did not accept the above accounting and directed the Appellant-JSPL for a separate accounting of distribution business.**
- (vii) that for the FY 2010-11 (which petition was submitted by JSPL with the Tariff Petition for FY 2011-12), the Appellant-JSPL created a separate accounting centre under **“Business Area 1900 (Cost Centre P19171130)”** in JSPL’s books of accounts for recording separately all the financial transactions relevant to the licensed distribution and retail supply business of electricity. The financial and accounting data under the earlier accounting unit 8030 were transferred to the new accounting centre. The Appellant-JSPL carried out the segregation of accounts for the licensed distribution and retail supply business of electricity after a detailed evaluation of the existing accounting systems, flow of information and documents for the various transactions, applicable statutes, internal control procedures with respect to the identification of transactions and recording thereof, billing and collection information and procedures,

requirements of financial management information systems (MIS), and operational efficiency of ERP package. Segregation was done on the basis of functional utilization.

(viii) that the segregation of fixed assets, long term liabilities, current assets, current liabilities, reserve and surplus, etc for the FY 2010-11 from the integrated books of accounts were carried out on the following basis:

- (a) Segregation of fixed assets was done on a functional basis;
- (b) Segregation of provision for depreciation on the basis of fixed assets identified for the licensed distribution and retail supply business of electricity and their respective date of acquisition of fixed assets by the licensee has been done;
- (c) Identification and segregation of current assets & liabilities have been done on a functional basis and accordingly, the current assets and current liabilities in respect of power purchase & O&M expenses, etc. pertaining to the licensed distribution & retail supply business have been transferred to the new separate accounting centre for the licensed business of the licensee.
- (d) Segregation of revenues from sale of power and meter rent recovered from consumers in the licensed area have been booked in the newly created accounting centre.
- (e) Segregation of expenditure in respect of purchase of power for supply to the consumers in the licensed area and any other expenditure pertaining to the distribution & retail supply business such as repair & maintenance expenses, administration & general expenses, allocated establishment related expenses

have been done. The common expenses were rationally allocated to the licensed businesses and the basis of such apportionment was submitted in detail by the Appellant. The above basis of segregation was submitted by the Appellant in its Tariff Petition for the FY 2011-12 being Petition No. 6/2011. All the financial and accounting informations not previously segregated and recorded separately, have now been separated. On this basis of segregation, a fixed assets statement and expense details for FY 2010-11 for the distribution business was prepared and the same was certified by the statutory auditor (who is also the Statutory Auditor for JSPL's consolidated business) and communicated to the State Commission, vide letter, dated 30.07.2011

- (ix) that in terms of the above, except for the preparation of separate Profit & Loss account and Balance Sheet, the financials had been duly segregated to enable the State Commission to independently deal with Revenue Requirements of the Distribution activities of the Appellant-JSPL.
- (x) that the State Commission, however, vide Order, dated 8.2.2012, did not accept the above certified statement of fixed assets and expenses and directed JSPL to submit the independent audited accounts for the distribution business.
- (xi) that for the FY 2011-12, JSPL recorded all the financial and accounting transactions relevant to the licensed distribution and retail supply business of electricity in the separate Business Area 1900, which is based on the segregation of accounts carried out in FY 2010-11 certified by the statutory auditors and submitted to the State Commission. The

financial transactions of JSPL related to other businesses are not recorded in the above cost centre.

- (xii) that JSPL has segregated and ring fenced the accounting of the transactions pertaining to the licensed business activities by creating a separate cost centre in JSPL's books of accounts.
- (xiii) that the only point before the State Commission was whether JSPL is required to furnish separate audited accounts and separate Balance Sheet for Distribution functions, irrespective of whether the same is possible and irrespective of the fact that the need for such audited accounts gets duly satisfied by the certificate given by the statutory auditor. Since, JSPL is engaged in multiple businesses other than distribution and there is no separate company registered to carry out the licensed business and the audited accounts are prepared for the entire company as a whole and the auditor's report is prepared certifying that the accounts represent the true and fair view of the affairs of the Company. Since, with regard to the distribution business of the Appellant-JSPL, the Auditor had certified that the accounts related to distribution business form integral part of the audited accounts and the same are prepared using data extracted from the audited books of accounts and the accounts related to the distribution business are extracted from the audited accounts based on the transactions in the business area 1900 and the Auditor could not give separate audited balance sheet for its distribution business because as per Companies Act, 1956, there cannot be two sets of the audited balance sheets for the same Company and since, the Auditor is only empowered to give such audit report for the accounts of the entire Company and not for each division of the said

Company and **since, the Auditor's certificate along with the main Audit Report for JSPL, as a Company, are adequate proof of the actual expenses and capital cost incurred by the distribution business of JSPL, the said issue should have been decided by the State Commission in favour of the Appellant-JSPL, but the State Commission has not accepted the said pleas of the Appellant-JSPL.**

- (xiv) that the CSERC (License) Regulations, 2004 cannot override provisions of the Companies Act, 1956. It is a well settled principle that a subordinate legislation must not only be in conformity with the provisions of the Parent Act but the same must also be in conformity with any other Act as held in Kerala Samasthana Chetu Thozhilali Union vs. State of Kerala (2006) 4 SCC 327 and Damodar Valley Corporation vs. Central Electricity Regulatory Commission and Others in the Appellate Tribunal's Order, dated 23.11.2007, in Appeal No. 271, 273 and 275 of 2006 and Mathew Antony vs. Oriental Bank of Commerce AIR 2013 Ker 124.
- (xv) that the Auditor who is appointed and empowered under the provisions of the Companies Act, 1956, cannot be compelled under the CSERC (License) Regulations, 2004 to prepare an Auditor's Report for the distribution business of JSPL, contrary to the provisions of the Companies Act, 1956.
- (xvi) that the State Commission has rejected the accounts without granting an opportunity to JSPL to substantiate the accounts or clarify the nature of the accounts submitted by JSPL.
- (xvii) that the certificate of the Statutory Auditor related to the segregated accounts for the distribution business are

adequate and ought to have been accepted by the State Commission.

(xviii) that the JSPL, held discussions with its Statutory Auditors regarding the accounts for its distribution and transmission businesses, wherein the Appellant-JSPL was informed by its auditors that the auditors cannot prepare an independent balance sheet for the licensed business. Thereafter, the Appellant, vide letter, dated 15.4.2014, requested its Statutory Auditors, M/s S. S. Kothari & Mehta & Co to undertake an independent verification of the accounts pertaining to the licensed distribution and transmission businesses and certify the same based on true and fair view. In response to the above letter, the Statutory Auditor agreed to an independent verification, identification of the assets and expenses exclusively related to the distribution business and the apportionment of common/shared assets and expenses and certify an audited statement of accounts, which represents the true and fair view of the financials of the distribution business. The Statutory Auditors of the Appellant-JSPL became ready to undertake such exercise requiring a time of two months and, thereafter, to issue a certificate of the accounts. But the State Commission, vide its order, dated 10.7.2013, had envisioned a final true up of the year 2011-12 on the basis of segregated audited accounts, observing as under:

"4.11 In view of the above discussions, the Commission has carried out provisional true up for FY 2011-12 based on the actual figures for various parameters submitted by the JSPL and prudence check by the Commission which is detailed in subsequent paragraphs. Final true-up would be undertaken only after the receipt of the audited segregated accounts for the FY 2011-12 as per the Companies Act, 1956 and CSERC (License) Regulations, 2004."

(xix) that the statutory auditor of the Appellant-JSPL sought for a period of two months to conduct the independent verification

and certification, but the time was not granted by the State Commission. The State Commission may consider such accounts for true up of 2011-12, 2012-13 and 2013-14 and for determination of tariff for subsequent years.

- (xx) that as a result of the rejection of accounts, the State Commission has only approved the Gross Fixed Assets (GFA) of Rs. 2235.83 lakhs as against Rs. 3287.41 lakhs claimed by JSPL. The reduction in GFA has a cascading impact on other components of the Aggregate Revenue Requirements, namely: Depreciation, Equity and Return on Equity, Operation and maintenance Expenses, Working Capital and Interest on Working Capital and Non-Tariff Income

The resultant drastically reduced Aggregate Revenue Requirements have a direct impact on the financial viability of JSPL distribution business and would burden the non-distribution segments of the Appellant-JSPL, which is contrary to the cost plus regime under the Electricity Act, 2003

- (xxi) that in the aforesaid circumstances, the Appellant-JSPL will be in a position to make available the audited accounts of the distribution business of JSPL independent of other businesses of JSPL with the auditors certificate duly certifying the accounts representing the true and fair view, except for a separate balance sheet and profit & loss account all the essentials of the duly audited accounts will be available to the State Commission to undertake the truing up exercise as envisaged in the Impugned Order.

10.2 **Per-contra**, Mr. C.K. Rai, the learned counsel appearing for the State Commission, has taken the following pleas:

- (a) that the learned State Commission, vide its Impugned Order, dated 12.7.2013, in Petition No. 55(T)/2012, has

determined the Aggregate Revenue Requirement for the control period of 2013-14 to 2015-16, and the Retail Tariff for FY 2013-14, for the Appellant's Distribution and Retail Business.

- (b) that in its tariff order for 2011-12, dated 8.2.2012, the State Commission had directed the Appellant to file the Audited Segregated Accounts for distribution business along with the petition for FY 2012-13. The Appellant-JSL, submitted its FY 2012-13 ARR & Retail Tariff Petition on 24.7.2012 with a request to allow additional one month time for submission of audited accounts for the distribution business. However, the Appellant-JSPL submitted the segregated accounts on 15.10.2012, with a delay of approximately three months from the date of submission of FY 2012-13 ARR & Tariff Petition. On examination of the accounts submitted by the Appellant-JSPL during processing of the FY 2012-13 Tariff Order, the State Commission has noted that accounts prepared for the distribution business were barely extractions from the audited accounts of the parent company i.e. JSPL based on certain assumptions as provided by the company management. Further, the audited accounts submitted by the JSPL did not comply with the CSERC (License) Regulations, 2004 and there was no opinion from the Auditor with respect to whether the accounts prepared gives true and fair view of the JSPL - licensed distribution business.
- (c) that the State Commission has dealt with the issue of segregation of accounts at para 2.60 of the tariff order wherein the State Commission has taken note of the objection raised by the stake holders. The same is reproduced below for ready reference:-

"2.60 RIUS objected that the Commission is repeatedly directing JSPL in previous tariff order for FY 09-10 and FY 11-12 to submit segregated accounts. JSPL-D in the petition ARR for FY 12-13 had submitted statutory auditor certificate for segregation of accounts which were insufficient to find any details and required elaborate description. RIUS also submitted that the submissions made by JSPL were not tenable and could not be allowed, being blatantly contrary to Section 51 of the Electricity Act 2003 which provided that a distribution licensee must maintain separate accounts for each of its other business, Regulation 28 of CERC (License) Regulations, 2004 which provided that a distribution licensee is required to maintain accounts of its other business in such a manner as if it were being carried on by separate companies, Regulation 17 of CSERC (Details to be furnished by licensee or generation company for determination of tariff and manner of making application) Regulations, 2004 which provided that licensee should give separate revenue statements, expenditure statements, balance sheet and cash-flow statement. RIUS submitted that the above provisions of law categorically required a distribution licensee to maintain separate accounts of its other business and JSPL admitted that it was not maintaining separate accounts of its distribution business and hence, clearly in violation of law. RIUS further state that maintaining separate accounts of its distribution business was a condition in the distribution license granted to JSPL by Ld. Chhattisgarh Commission vide its order dated 29.11.2005 and Commission repeatedly directed JSPL to file segregate accounts of its distribution business.

2.61 RIUS objected that the requirement of maintaining separate account of the distribution business was mandated so that the distribution business did not in any way subsidize other business undertaking."

- (d) that the State Commission, in the tariff order for FY 2012-13, has considered the purported segregated accounts of the Appellant and rejected those accounts on the ground that it did not conform to the conditions of the CSERC (License) Regulations, 2004, or the Companies Act, 1956. The Commission had directed the JSPL in the tariff order for 2012-13 to file proper segregated accounts and get the same audited in accordance with CSERC (License) Regulations, 2004. It was in those circumstances that the State Commission has rejected the alleged segregated accounts submitted by the Appellant-JSPL, inter-alia, on the following grounds:

- i. that the accounts were merely extraction of the audited accounts of parent company, JSPL.
- ii. Accounts were based on assumptions.
- iii. Book keeping was not done separately for the regulated business.
- iv. The Accounts did not reflect the actual expenditure with respect to JSPL's distribution business.
- v. That accounts submitted by the JSPL did not fulfill the requirement as prescribed in the CSERC (License) Regulations, 2004, and there was no auditor's opinion as to whether the accounts prepared gives a true and fair view of JSPL – licensed distribution business.

10.3 We have considered and pondered over the submissions and counter submissions made by the parties on this issue of non-acceptance of the accounts submitted by the Appellant-JSPL. It is evident to us that the Appellant-JSPL was directed by the State Commission in its tariff order for 2011-12, dated 8.2.2012 to file the Audited Segregated Accounts for distribution business along with the petition for FY 2012-13 but the Appellant-JSPL, while submitting its FY 2012-13 ARR & Retail Tariff Petition on 24.7.2012 without making compliance of the tariff order, dated 8.2.2012 of the State Commission, further requested to allow additional one month time for submission of audited accounts for the distribution business. The segregated accounts were submitted by the Appellant-JSPL on 15.10.2012 after a delay of three months without there being a sufficient and cogent reason, and the State Commission, on examination of the accounts submitted by the Appellant-JSPL during processing of the FY 2012-13 Tariff Petition, again noted that accounts prepared for the distribution business on behalf of the Appellant were barely extractions from the audited accounts of the parent company namely, JSPL. Not only this so-called audited accounts submitted by the Appellant-JSPL did not

comply with the CSERC (License) Regulations, 2004 and there was no opinion from the Auditor with respect to whether the accounts prepared give true and fair view of the JSPL - licensed distribution business, then we are left with no alternative but to accept the reasonings or findings recorded by the State Commission in the impugned order.

10.4 We, further observe that the State Commission while passing the impugned order, dated 12.7.2013 in Petition No. 55/2013, recorded sufficient reasons for rejecting the segregated accounts. Those accounts were merely extraction of the audited accounts of parent company, JSPL and accounts were based on assumptions. Book keeping was not done separately for the regulated business. Further, the accounts did not reflect the actual expenditure with respect to JSPL's distribution business and the Appellant-JSPL submitted the accounts without fulfilling the requirement as prescribed in the CSERC (License) Regulations, 2004, and there was no auditor's opinion as to whether the accounts prepared gives a true and fair view of JSPL – licensed distribution business.

10.5 After consideration of the various submissions made on behalf of the Appellant on this issue, we are unable to accept this contention of the Appellant that the Appellant prepares integrated annual accounts for its entire business, the Appellant has been reporting the financial information under broad business segments issued by Institute of Chartered Accountants of India and the size of the distribution business of the Appellant is small compared to the overall operations of the Appellant and further there were number of common expenses and fixed assets in the businesses of the Appellant and hence, the segregation process was, therefore, not simple and was a continuous process. When repeated directions were given by the State Commission to the Appellant-JSPL to submit audited segregated accounts for distribution business and no serious and legitimate attention was being paid by the Appellant towards the direction of the State Commission,

the Appellant cannot blame the others and has no right to find fault in the impugned order without making compliance of the earlier directions regarding submission of audited segregated accounts for distribution business of the Appellant-JSPL, in letter and spirit, and in true sense. The different excuses made by the Appellant on one pretext and the other cannot be legally accepted and further in order to give desired relief to the Appellant when the Appellant itself caused delay at every stage without making any legitimate efforts in that regard.

10.6 The learned State Commission, in its order, dated 8.2.2012, rightly did not accept the said certified statement of fixed assets and expenses and rightly directed the Appellant to submit the independent audited accounts for its distribution business. We are, further, unable to accept this contention of the Appellant that the Appellant-JSPL has segregated and ring fenced the accounting of the transactions pertaining to the licensed business activities by creating a separate cost centre in JSPL's books of accounts. The learned State Commission has rightly decided the question or issue that the Appellant-JSPL is required to furnish a separate audited account and separate balance sheet for distribution business irrespective of whether the same is required to be done under the Companies Act. We are further not inclined to accept the Appellant's contention that since the Appellant-JSPL is engaged in multiple businesses other than distribution and there is no separate company registered to carry out the licensed business and the audited accounts are prepared for the entire company as a whole and the auditor's report is prepared certifying that the accounts represent the true and fair view of the affairs of the Company and it is not possible to prepare separate audited accounts for the distribution business to meet the report of the State Commission. Consequently, we do not find any merit or substance in any of the submissions advanced on behalf of the Appellant on this issue. We fully agree to the submissions made on behalf of the Respondent-State Commission and also findings/reasoning recorded in the impugned

order challenged before us in the aforesaid two Appeals. Even though, some of the expenses of the various business of the Appellant's company may be common and have to be apportioned to distribution business, it should be possible for the Auditors to draw up separate accounts certifying the expenses apportioned to electricity business as true and fair view of the JSPL's distribution business. We, therefore, give liberty to the Appellant to prepare separate accounts for their distribution business as sought by the State Commission duly certified by the statutory auditors and the State Commission shall consider the same in the final true-up of the accounts. The auditors will also certify the common expenses apportioned to the distribution business as true and fair view of the JSPL's distribution business. **This issue i.e. Issue No. A is, accordingly, decided against the Appellant.**

11. **Issue No. B - relating to Operation & Maintenance Expenses:**

11.1 On this issue, the following submissions have been made on behalf of the Appellant-JSPL:-

- (a) that the State Commission has rejected the segregated accounts of JSPL and not considered the Operation & Maintenance Expenses submitted by JSPL in its accounts for the year 2011-12 in the determination of the base year expenses.
- (b) that the State Commission ought to have calculated the operation & maintenance expenses for the previous years on the basis of the unaudited segregated accounts submitted by JSPL as specifically provided for in the applicable regulations.
- (c) that the Tariff Regulations, 2012 provide for calculation of Operation & Maintenance expenses on the basis of a base year 2012-13, which shall be derived on the basis of normalized average of the actual operation & maintenance accounts available in the audited/unaudited accounts for the previous

three years immediately preceding the base year 2012-13 subject to prudence check.

- (d) that the State Commission, in the impugned order, has proceeded only on the basis that the segregated accounts for 2011-12 submitted by JSPL, cannot be considered at all for determination of the base year tariff because the same were not audited. The Tariff Regulations, 2012 clearly provide for the State Commission to determine the operation & maintenance expenses based on audited or unaudited segregated accounts. In the instant case, the accounts for JSPL, as a whole, had been audited and the segregated accounts for JSPL had been certified. Therefore, the State Commission ought to have considered the expenses as per the submitted segregated accounts subject to prudence check. However, the State Commission without conducting any prudence check and without even considering the expenses submitted by JSPL, proceeded to determine the base year expenses.

11.2 **Per-contra**, the following submissions have been raised on behalf of the Respondent – State Commission:

- (a) that the learned State Commission has rightly rejected the segregated accounts of JSPL and has rightly not considered the operation & maintenance expenses submitted by JSPL in its accounts for the year 2011-12 in the determination of the base year expenses.
- (b) that it is wrong on the part of the Appellant to mention that the State Commission ought to have calculated the operation & maintenance expenses for the previous years on the basis of the unaudited segregated accounts submitted by JSPL.
- (c) that the State Commission has not committed any illegality in passing the impugned order and has rightly proceeded on the

basis that the segregated accounts for 2011-12 submitted by JSPL, cannot be considered at all for determination of the base year tariff because the same were not audited.

- (d) that the State Commission, after applying prudence check, passed the impugned order and correctly decided the operation and maintenance expenses for the control period on the basis of approved expenses for the previous years, namely, 2009-10, 2010-11 and 2011-12 on the ground of non-availability of the audited segregated accounts.
- (e) that the condition prescribed for the application of Tariff Regulations, 2012 have not been fulfilled by the Appellant-JSPL inspite of repeated directions of the State Commission on one pretext and the other pleading that it was not possible to get the segregated accounts audited and verified.

11.3 After serious consideration of the rival submissions on this issue, we do not find any infirmity in the impugned order of the State Commission and we agree to the views and findings recorded by the State Commission in the impugned order because the Appellant itself is responsible for the present predicament and it cannot be granted any relief just on the ground that segregation of the accounts is not possible and the segregated account cannot be audited and verified as per the required regulations and provisions of the Companies Act, 1956 and CSERC (License) Regulations, 2004. **This issue i.e. Issue No. B is also decided against the Appellant.**

12. **Issue No. C - relating to Gross Fixed Assets & Equity:**

12.1 On this issue, the following submissions have been made on behalf of the Appellant-JSPL:-

- (a) that the State Commission has calculated the amount of equity of JSPL as Approved Gross Fixed Assets (Rs. 2235.83 lakhs) deducted by Consumer Contribution (Rs. 514.5 lakhs)

and Actual Debt incurred by JSPL (Rs. 1520.73 as on 01.04.2008). The Approved Capital Cost is much less than the Capital Cost of Rs 3287.41 lakhs claimed by JSPL. The State Commission has considered Equity Share of Rs. 200.60 lakhs being the balance of the approved capital cost.

- (b) that the Appellant-JSPL had claimed a total Gross Fixed Asset of Rs. 3287.41 lakhs and in accordance with the Tariff Regulations, JSPL had claimed the equity on the basis of normative debt equity ratio of 70:30 as the actual equity was higher than 30%. Even assuming but not admitting the reduced Gross Fixed Assets of Rs 2235 as approved by the State Commission is correct, the State Commission ought to have proportionately allowed Rs 516.399 lakhs as equity being 30% of the Approved Gross Fixed Assets reduced by Consumer Contribution (i.e. 30% of Rs. 2235.83 lakhs - Rs. 514.50 lakhs = Rs. 1721.33 lakhs). The State Commission has reduced the equity component while continuing with the full value of actual debt to fund the approved Gross Fixed Assets (a value lesser than the actual Gross Fixed Assets submitted by JSPL).
- (c) that the reduction of Gross Fixed Assets by the State Commission does not change the actual expenditure incurred by JSPL which was financed through debt, equity and consumer contribution. In case the Gross Fixed Assets of JSPL were reduced, the State Commission should have reduced both equity and debt proportionately so as to continue the debt-equity ratio submitted by JSPL for the proposed Gross Fixed Assets.
- (d) that the State Commission has wrongly taken the view that JSPL is claiming additional equity that it has injected for repayment of existing debt and, therefore, the same has been rejected by the State Commission. The actual equity invested

by JSPL has always been higher than 30% of its Gross Fixed Assets (GFA) and, therefore, it had claimed 70:30 ratio in the Petition before the State Commission. In the instant case, JSPL is not claiming Rs. 516.399 lakhs as equity as mentioned above on the basis of any additional equity infused in the year 2011-12 or any of the subsequent years. JSPL is only seeking its pre-existing equity as per the normative debt-equity ratio of 70:30 of the approved Gross Fixed Assets. If the State Commission approves a lower Gross Fixed Assets than sought by JSPL, the State Commission should proportionately lower the equity and debt portions so as to maintain the same ratio.

- (e) that the reduced equity results in lower return and affects the profitability of the licensee which is contrary to the regime of Electricity Act, 2003 and the Tariff Regulation notified.

12.2 **Per-contra**, the Respondent – State Commission has made the following submissions:

- (a) that the Appellant in MYT petition has not been able to provide satisfactory information to substantiate its claim of Rs.3287.41 lakhs towards gross fixed assets. The State Commission had undertaken a detailed review of the assets of the JSPL distribution business during the processing of the previous year petitions (i.e. FYs 2009-10, 2010-11 & 2011-12) and had ascertained that the gross fixed assets of Rs.2235.83 lakhs corresponding to 2 nos. of transformers and supporting infrastructure was adequate for meeting the demand in the distribution area of the Appellant-JSPL. In absence of any additional supporting documents provided by JSPL in the subsequent petitions, the State Commission finds no merit in differing or revisiting the gross fixed assets approved in the previous tariff orders and rightly considered the same for the

purpose of ARR determination of the JSPL-D for the control period FY 2013-14 to FY 2015-16.

- (b) that the State Commission, at para 3.30 of the impugned MYT order, has dealt with the issue of gross fixed assets, as follows:

“Commission’s View:-

3.30 As per Clause 4.58 of the Tariff Order for FY 2012-13 the Commission had viewed the following with respect to the gross fixed assets of the JSPL distribution business:

“4.58 In the Tariff Order for FY 2011-12, the Commission had approved the gross fixed assets of Rs.22.36 Cr after prudence check. In that Order, the Commission had undertaken a detailed review of the assets of the JSPL distribution business and had ascertained that the 2 nos. of transformers and supporting infrastructure was adequate for meeting the demand in the distribution area of the petitioner. In absence of appropriate audited accounts for FY 20-11-12 and lack of details/substantiation provided by the petitioner, the Commission finds no reason to differ from the amount of fixed assets approved in the previous tariff order.”

3.31 The Commission observed that JSPL-D has not submitted any further information in its MYT Petition for substantiating and justifying the gross fixed assets base of Rs.3287.41 Cr. Also, the audited accounts for FY 2011-12 were not found to be in compliance with the CERC (License) Regulations 2004 and Companies Act 1956. Therefore, the Commission did not accept the accounts submitted by JSPL-D for FY 2011-12 at the time of issuance of FY 2012-13 Tariff Order. Further, the audited segregated accounts for FY 2012-13 was not made available by the licensee along with the MYT Petition.

3.32 In the light of the above, the Commission doesn’t find any reason to revise the fixed assets approved by it in the previous tariff order and approves the fixed assets of Rs.2235.83 lakhs for the Control Period FY 2013-14 to FY 2015-16 as provided in table below:

Table 12 : Gross Fixed Assets approved by the Commission

(All Fig in Rs. Lakhs)

<i>Particulars</i>	<i>FY 2013-14</i>	<i>FY 2014-15</i>	<i>FY 2015-16</i>
<i>Gross Fixed Assets</i>	<i>2235.83</i>	<i>2235.83</i>	<i>2235.83</i>

- (c) that since JSPL-D had not filed audited segregated accounts for FY 2010-11 and in the absence of any additional information submitted by JSPL-D for substantiating its claims towards fixed assets for FY 2010-11, the State Commission found no reason for deviating from fixed assets approved by it in its previous tariff orders.

12.3 After consideration over the rival submissions on this issue, we find no infirmity on any of the findings recorded by the State Commission in the impugned order because in the absence of any additional supporting documents to provide satisfactory information to substantiate its claims provided by JSPL in the subsequent petition, the State Commission did not find any convincing reason or merit in differing and revisiting the gross fixed assets approved in the previous tariff orders passed by the State Commission and the State Commission has rightly considered the same gross fixed assets for the purpose of ARR determination of JSPL-D for the control period FY 2013-16. In the absence of appropriate audited accounts for FY 2011-12 and lack of details/substantiation provided by the Appellant-JSPL, the State Commission found no reason to differ from the amount of fixed assets approved in the previous tariff order. However, there is merit in the Appellant's contention regarding proportionate reduction of debt & equity as certain gross fixed assets have been disallowed. **Accordingly, this issue i.e. Issue No. C is remanded to the State Commission for reconsideration.**

13. **Issue No. D - relating to Debt Equity Ratio:**

13.1 On this issue, the following submissions have been made on behalf of the Appellant-JSPL:-

- (a) that the State Commission has considered a normative loan on the debt-equity ratio of 88:12 even though there was no loan outstanding for JSPL. The Tariff Regulations, 2012 provide that in case of licensees assets declared under commercial operation prior to 1.4.2013, debt-equity ratio allowed for determination of tariff for the period ending 31.3.2013 shall be considered.
- (b) that the 2006 Tariff Regulations (applicable for tariff year 2012-13) provide that debt – equity ratio of 70:30 is to be applied if actual equity investment is equal to or more than

30% of total fixed assets. JSPL had invested equity capital to repay all the outstanding loans in FY 2011-12 and, therefore, the entire fixed assets of JSPL distribution business is based on equity contribution.

- (c) that JSPL is entitled to return on equity on the actual equity balance subject to a maximum of 30% and, accordingly, JSPL had claimed a debt-equity ratio of 70:30 in its Petition. However, the State Commission has continued to consider the previous years' debt-equity ratio.

13.2 **Per-contra**, the Respondent – State Commission has made the following submissions:

- (a) that Tariff Regulations, 2012 provide that in case of licensees assets declared under commercial operation prior to 1.4.2013, the debt equity ratio allowed for determination of tariff for the period ending 31.3.2013 shall be considered. The State Commission, in the tariff order for 2012-13, has dealt with this issue in detail and allowed the debt of Rs.1520.73 lakhs and equity of Rs.200.60 lakhs. This equity base has been followed by the State Commission in all subsequent tariff orders, since there has been no capital expenditure envisaged during the control period. The State Commission has considered the equity share of Rs.200.60 lakhs as approved by it, in the previous tariff order towards distribution business for the control period FY 2013-14 to 2015-16 and the same was in complete conformity with the applicable tariff regulations.
- (b) that the State Commission in the impugned order, on this issue, has expressed its views, which is reproduced herein below:

“Commission’s View:

2.72 The Commission does not accord with the view put forth by the JSPL. As also detailed in the Tariff order for FY 2012-13, the Commission is of the view that JSPL-D had figuratively repaid the existing loans by infusing equity into the project which in turn increased the financing cost of

the project hence the refinancing, which exchanged cheaper loan to expensive equity, cannot be allowed. Therefore, the Commission had considered the same debt and equity ratio as approved by it in the previous orders."

- (c) that in the tariff order for FY 2012-13, the State Commission has approved the actual loan of Rs.1520.73 lakhs as loan component and rest Rs.200.60 lakhs as opening equity base qualified for Return on Equity (ROE) calculation. In the said tariff order, the State Commission has considered the equity share of Rs.200.60 lakhs after reducing loan portion from the assets financed from loan and equity for FY 2008-09 Debt Equity Ratio.
- (d) that the equity, as approved by the State Commission, for previous years has been taken as equity for the FYs 2013-14 to 2015-16 for the following reasons:
- i. JSPL had not submitted cash flow statement for FY 2010-11 or FY 2011-12 for substantiating the claim of repayment of the entire loan amount.
 - ii. The officials of JSPL-D admitted before the Commission that there is no actual segregation of JSPL-D from JSPL and the segregated accounts of JSPL-D are prepared just for regulatory accounting.
 - iii. There were no loans which were taken by JSPL-D and no loans are paid back in actual.
 - iv. There were no proofs submitted by JSPL as to substantiate the claim of repayment of above mentioned loan and cash flow from parent company to repay the loan.
 - v. Besides, assuming if loan is considered to be repaid, the JSPL has practically refinanced the ICICI loan mentioned above from its parent company infusing part equity (to make equity portion 30% from earlier claimed 7%) and

part loan. CSERC Tariff Regulations 2006 under paragraph 13.6 and 13.7 clearly provide that:

"swapping of equity and loans shall be permitted, provided it does not affect the tariff adversely" "Restructuring of capital cost, in terms of relative share of equity and loan, shall be permitted provided it does not affect the tariff adversely"

- vi. JSPL-D could repay the loan by increasing equity or by refinancing the existing loans only in case it reduces the overall cost of the financing.
- vii. JSPL-D has figuratively re-paid the existing loans by infusing equity into the project which, has, in turn increased the financing cost of the project, hence the refinancing, which exchanges cheaper loan into expensive equity, cannot be allowed.

13.3 We have considered the rival submissions advanced by the parties on this issue and we again find ourselves in agreement with the reasoning given by the State Commission in the impugned order and also we find substance and merit in the submissions raised on behalf of the Respondent-State Commission. **Consequently, this issue i.e. Issue No. D is also decided against the Appellant.**

14. **Issues Nos. E & F - relating to Consumer Security Deposit and interest on the amount of excess security deposit as non-tariff income:**

14.1 Since, both these issues are inter-connected, they are being disposed-of simultaneously. On these issues, following submissions have been made on behalf of the Appellant-JSPL:-

- (a) that the State Commission has taken into consideration the security deposit as Rs. 2149.70 lakhs as against the actual amount of Rs. 2043.49 lakhs without any basis.
- (b) that the opening and closing balance of security deposits for Control Period as per the consumer base for all three years.

JSPL-D considered a marginal increase in its energy sales and envisages no increase in connected load. Hence, it did not expect any addition in security deposit during the Control Period.

- (c) that the closing balance of Rs. 2043.49 lakhs in its Petition, which was confirmed during the Technical Validation Session. JSPL further submitted the same figure in its letter, dated 10.07.2013, giving details on interest on security deposit paid to consumers in FY 2012-13 saying that JSPL had paid/adjusted against dues the interest on security deposit payable to the consumers in the bill issued in the month of May, 2013. But the State Commission has ignored the above submissions without any basis and determined the security deposit as Rs. 2149.70 lakhs.
- (d) that the State Commission erred in not considering the revised opening balance of consumer security deposit for the FY 2013-14 submitted by JSPL on the basis that the same was not filed within the time granted by the State Commission. JSPL had sought extension of time by only one week and in any case had submitted the revised consumer security deposit balances vide letter, dated 10.7.2013, on 11.7.2013 i.e. prior to the Impugned Order.
- (e) that the State Commission has acted arbitrarily in rejecting the revised Security Deposit amount. The discrepancies in the Petition of JSPL were only with regard to the opening balance of the Security Deposit and not with regard to closing balance. JSPL had erroneously submitted a figure of Rs. 2078.43 lakhs as its opening balance, which was clarified at the Technical Validation Session wherein JSPL had submitted that the opening balance was same as the closing balance namely, Rs. 2043.49 lakhs. The State Commission has allowed Rs.2149.70 lakhs as Security Deposit without any basis and without

providing any calculation in the impugned order. The Consumer Security Deposit is to be based on actual and cannot be assumed. The above correction in the figure may be considered at the time of the true up for the FY 2013-14.

- (f) that the State Commission cannot arbitrarily decide on the quantum of security deposit, when JSPL had specifically submitted accounts. The above quantum of security deposit balance has an impact on Working Capital requirements and Interest on Working Capital and the Non-Tariff Income of JSPL. This combined effect of the above results in reduced Annual Revenue Requirements and adversely affects the functioning of the distribution licensee/JSPL-D.

14.2 **Per-contra**, contrary to the submissions of the Appellant raised on this issue, the Respondent/State Commission has raised the following submissions:

- (a) that Appellant-JSPL before the State Commission has claimed opening and closing balance of security deposits for control period as per the consumer base for all three years. JSPL-D considered a marginal increase in its energy sales and envisages no increase in connected load. It means, that the Appellant did not expect any addition in security deposit during the control period. JSPL-D has calculated the interest at a rate of 9% on the outstanding security deposits in accordance with the prevailing bank rate of Reserve Bank of India.
- (b) that during the technical validation session, the State Commission drew JSPL-D's attention towards the data discrepancies in the petition with regard to the consumer security deposit and asked to submit revised consumer security deposit balances by 5.7.2013. The JSPL-D requested the Commission vide letter, dated 6.7.2013 for extension of

time by one week. The Commission did not accept and proceeded with latest information available with it regarding consumer security deposit.

- (c) that the State Commission has envisaged the increase in consumer security during FY 2013-14 in line with the revised retail tariff as approved in the impugned order.
- (d) That, based on the consumer security balance submitted by JSPL-D, the State Commission has computed the interest on this balance of consumer security deposit for FY 2012-13 at the interest rate 8.5% as per prevailing RBI bank rates as on 1.4.2013.

14.3 After considering all the rival submissions, we do not find any perversity or any illegality in any of the findings recorded on these issues in the impugned order. The contentions of the Appellant-JSPL on these issues do not bear any merit because there were data discrepancies, as stated above, in the Appellant's Petition with regard to the consumer security deposit and when the State Commission asked the Appellant to submit revised consumer security deposit on a fixed date, the Appellant, in spite of making compliance of filing revised consumer security deposit statement, requested for some more time. Consequently, the State Commission was left with no other alternative except to proceed with the latest information available with the State Commission regarding consumer security deposit. **Thus, these issues i.e. Issues Nos. E & F are also decided against the Appellant.** However, the actual data of consumer security may be considered by the State Commission at the time of true-up for the FY 2013-14.

15. **Issue No. G - relating to Bad and Doubtful Debts:**

15.1 The following submissions have been raised on behalf of the Appellant, on this issue:

- (a) that the State Commission erred in disallowing the provision for bad and doubtful debts. The Commission's view in the impugned order, dated 12.7.2013, at para 3.82, 3.83 and 3.84 thereof are to the effect that according to the Regulations 66.8 of the CSERC MYT Regulations, 2012, a provision of maximum 1% revenue of retail supply business shall be allowed. The same shall be subject to true up on aggregate basis at the end of Control Period on actual basis and prudence check made by the State Commission. The consumer profile of JSPL-D was dominated by HT consumers with LT consumers contributing only a miniscule quantum to the total sales of JSPL-D. On this basis, the State Commission expressed the view that the JSPL-D should be in a position to collect 100% of energy billed without any requirement for bad and doubtful debtors and also in absence of appropriate audited accounts for previous years, the amount of bad debts written off in the previous year and the current level of bad and doubtful debtors are difficult to ascertain. Accordingly, the State Commission has not considered any provisioning towards bad and doubtful debtors directing that the same would be considered at the time of true-up on availability of audited accounts.
- (b) that the State Commission has disallowed the provision for bad and doubtful debts on the basis that the majority of consumers of the Appellant-JSPL are HT consumers with LT consumers contributing only a miniscule quantum to the total sales. The view of the State Commission that JSPL would be able to collect 100% of the energy billed is erroneous. In case JSPL does not incur any bad debts, the same is subject to true up on actual basis at the end of the control period.

- (c) that the Tariff Regulations, 2012 specifically provide for a Provision for Bad and Doubtful Debt and does not leave it to the discretion of the State Commission to disallow the same in case the State Commission is of the view that there is no need to create such a provision.
- (d) that lastly, the State Commission has further disallowed the provision for bad and doubtful debts on the basis that JSPL had failed to file its audited segregated accounts. The Appellant-JSPL had filed segregated accounts duly certified by the statutory auditor and there cannot be any doubt as to the authenticity of the accounts. In any event, the allowance provision for bad and doubtful debts is unrelated to the audited accounts and has been normatively provided in the Tariff Regulations, 2012.

15.2 **Per-contra**, it has been argued on behalf of the Respondent Respondent/State Commission:

- (a) that the State Commission has not considered any provisions towards bad and doubtful debts, inter-alia, on the following reasons:
 - (i) that the Tariff Regulations provide only the maximum limit of 1% revenue of retail supply business and the regulations left it to the discretion of the State Commission to allow bad and doubtful debts depending upon the facts of each case.
 - (ii) that the fact of the present case was that the consumer profile of JSPL-D was dominated by HT consumers with LT consumers contributing only a miniscule quantum to the total sales of JSPL-D.

- (iii) that with such a small consumer base, JSPL-D should be in a position to collect 100% of energy billed without any requirement for bad and doubtful debtors.
- (iv) that in absence of appropriate audited accounts for previous years and lack of data with regards to actual amount of bad debts written off in the previous year feeling difficult to ascertain the current level of bad and doubtful debtors.
- (v) that the State Commission, on the applicable circumstances, has decided to consider it at the time of true-up on availability of audited accounts.

15.3 On careful consideration of the rival submissions on this issue, we find force in the submissions of the Respondent-State Commission because the consumer profile was dominated by HT consumers with LT consumers contributing only a miniscule quantum to its total sales and the Appellant-JSPL-D since failed to provide the audited accounts for the previous years and because of the lack of data with regards to actual amount of bad debts written off in the previous year and feeling difficult to ascertain the current level of bad and doubtful debtors. The State Commission has rightly disallowed the provision for bad and doubtful debts, giving liberty to consider it at the time of true-up on the availability of audited accounts.

15.4 We may again observe that the State Commission has rightly disallowed the provision for bad and doubtful debt on the basis that the Appellant/JSPL had failed to file its audited segregated accounts. The JSPL was claiming the relief of the provision of bad and doubtful debts on the ground that the Appellant-JSPL had filed segregated accounts with certificate of the statutory auditor, which did not find favour with the Commission. We agree to the findings recorded in the impugned order on this issue as the contentions of the Appellant-JSPL, on this

issue are meritless. **Thus, this issue i.e. Issue No. G is also decided against the Appellant.**

16. **Issue No. H - relating to Non-Recovery of Revenue Gap for the year 2011-12:**

16.1 The following submissions have been raised on behalf of the Appellant, on this issue:

- (a) that the State Commission has only allowed recovery of revenue gap of 2012-13 but disallowed recovery of the revenue gap approved during true-up of the year 2011-12. This view of the State Commission was based on the order, dated 10.7.2013, passed by the State Commission for determination of ARR for the FY 2012-13 and true-up for 2011-12. The Appellant-JSPL has challenged the decision of the State Commission vide Appeal No. 214/2013 against the impugned order dated 10.7.2013, which we are deciding simultaneously.
- (b) that the Appellant-JSPL had, vide letter dated 18.08.2011, undertaken that any loss or deficit incurred by the licensed business of Appellant-JSPL due to maintaining the tariff at the existing levels and not applying the tariff determined by the State Commission retrospectively from the beginning of the financial year, would not be carried forward to the subsequent years.
- (c) that the above undertaking was only with regard to non-applicability of the tariff determined for FY 2011-12 from the beginning of the FY i.e. from 1.4.2011. The above undertaking was also reconfirmed during the technical validation session held during the tariff determination process for FY 2011-12. In accordance with the above undertaking, the Appellant-JSPL had recovered the tariff

determined under Tariff Order, dated 8.2.2012, only from 23.2.2012 (i.e. after a period of 16 days of public notice) and had not carried forward to the subsequent years the loss suffered by the Appellant-JSPL due to non-recovery of tariff from 1.4.2011. However, such undertaking does not apply to any revision of tariff due under the true up exercise.

- (d) that the Appellant-JSPL had not given any undertaking during the true up process of 2011-12 and it was always understood by JSPL that any revision in ARR due to the true-up process would be recovered as part of the distribution tariff.
- (e) that even assuming the view of the State Commission that the undertaking was given with respect to the period wherein the Appellant-JSPL was charging the tariff of Chhattisgarh State Power Distribution Limited, the Appellant-JSPL is entitled to the true up of the tariff determined by the State Commission for the FY 2011-12.

16.2 **Per-contra**, the Respondent-State Commission's submissions on this issue, are as under:

- (a) that during the tariff proceeding for FY 2011-12, at the behest of the State Commission, the Appellant, vide its letter, dated 18.8.2011, had given an undertaking to the State Commission that it would meet the payment towards interest, employees expenses, power purchase cost etc. from its other segments of business in case the distribution business is unable to meet these requirements on account of maintaining tariffs at the existing level.
- (b) that the Appellant-JSPL had not proposed any revenue gap for FY 2010-11 and FY 2011-12 in the tariff proceeding for FY 2012-13. Besides in the tariff proceeding for FY 2012-13

the State Commission has also considered the undertaking given by the Appellant and the reconfirmation of the said undertaking by the Appellant during various meetings. The State Commission, vide impugned order, dated 10.7.2013, in petition no. 39/2012(D), which is subject matter of challenge before us in the connected Appeal being Appeal No. 214/2013, has taken note of the undertaking given by the Appellant-JSPL-D, in which it was undertaken that the Appellant will meet any payments due towards interest, repayment of debts, employee expenses, power purchase expenses, other expenses and cash deficits from its other business segments, in case the licensed distribution & retail supply business is unable to meet these from its own revenues and cash flows on account of maintaining the Tariffs at the existing/proposed levels. Any loss/deficit incurred by the licensed business of JSPL will not be carried forward to subsequent financial years for purpose of determination of tariff. Thus, the State Commission simply relied and acted upon the undertaking given by the Appellant-JSPL, from which the Appellant cannot be allowed to escape. The State Commission took cognizance of the undertaking made by the Appellant-JSPL-D in its letter, dated 18.8.2011, and no error can be said to have been committed by the State Commission on this score.

- (c) that the learned State Commission in para 4.105 of the impugned order, dated 10.7.2013, in petition no. 39/2012(D) has clearly noted that since the revenue gap determination of FY 2011-12, will not have any financial implication with the submission of JSPL-D, the determination of ARR and revenue gap for FY 2011-12 is solely for the purpose of records.

16.3 On careful scrutiny of the submissions made by the rival parties

on this issue, we do not find any merit or substance in the submissions advanced on behalf of the Appellant-JSPL. We agree to the finding recorded by the State Commission on this issue in the impugned order and we approve the same. **Thus, this issue i.e. Issue No. H is also decided against the Appellant.**

17. **Issue No.I - relating to Non-Recovery of Revised Transmission Charges and Non-Recovery of Expenditure incurred on Interest on Security Deposit:**

17.1 The following submissions have been raised on behalf of the Appellant, on this issue:

- (a) that the State Commission ought to have allowed at least the recovery of the revision in the transmission charges payable by JSPL due to the true up of the tariff of the transmission licensee. The State Commission has approved transmission charges of Rs. 186.47 lakhs in true-up as against Rs.177.46 lakhs for the year 2011-12.
- (b) that the revision in the transmission charges payable by JSPL to the transmission licensee (also JSPL) was beyond its control. The State Commission vide impugned order, dated 10.7.2012, in Petition No. 39/2012(T) had trued up the Aggregate Revenue Requirements of the transmission licensee and the same was applied to JSPL's distribution business. In fact, the revision in the transmission tariff was due to the correction in the methodology for determination of transmission charges by the State Commission. In view of the true up of the transmission charges, the Appellant-JSPL was required to pay higher transmission charges for the FY 2011-12 beyond what it had been allowed to recover through the distribution tariff. In such circumstances, JSPL cannot be forced to suffer a loss by under-recovery of its aggregate revenue requirements. Therefore, the Appellant-

JSPL must be allowed to recover the increased expenses incurred due to a revision in the transmission charges payable by JSPL.

- (c) that the undertaking, dated 18.8.2011, given by the Appellant-JSPL, only covered expenses related to the distribution business of JSPL and did not include the transmission charges payable by JSPL to the transmission licensee. The transmission charges payable by JSPL are a pass through for JSPL and JSPL should be allowed to recover the revision in the transmission charges validly decided by the State Commission in its True Up for transmission charges of the transmission licensee (also JSPL).
- (d) that the State Commission ought to have allowed at least the recovery of expenditure incurred by JSPL on interest on security deposit approved during the true up for the FY 2011-12. The State Commission had, vide order, dated 8.2.2012, directed JSPL to pay the interest on security deposit w.e.f. 29.11.2005 as per the CSERC (Security Deposit) Regulations, 2005 providing further that additional payment on this account shall be considered at the time of truing-up. Since, the licensee/Appellant-JSPL was directed w.e.f. 29.11.2005 to pay interest on security deposit to its consumers as per the provision of the aforesaid Regulations, the additional payment, if any, required to be made by JSPL-D on this account shall be considered at the time of truing-up.
- (e) that the Appellant-JSPL had complied with the above direction of the State Commission and incurred additional expenditure on interest on security deposit, the Appellant-JSPL as per the assurance of the State Commission in its order, dated 8.2.2012, sought recovery of the additional

payment during the True up for FY 2011-12. The State Commission had approved the amount of Rs.411.83 lakhs for interest on security deposit during true up for FY 2011-12 as against the approved amount of Rs. 138.69 lakhs in the tariff order, dated 8.2.2012. Hence, the State Commission, in complete contravention of its previous order, dated 8.2.2012, has not allowed the Appellant-JSPL to recover the above difference.

17.2 **Per-contra**, the Respondent-State Commission's submissions on this issue, are as under:

- (a) that the Appellant-JSPL during the proceeding for FY 2011-12, at the behest of the State Commission, vide its letter, dated 18.8.2011, had given an undertaking to the State Commission that it would meet the payment towards interest, employee expenses, power purchase cost etc. from its other segments of business in case the distribution business is unable to meet these requirements on account of maintaining tariffs at the existing level.
- (b) that since the Appellant-JSPL had not proposed any revenue gap for FY 2010-11 and FY 2011-12 in the tariff proceedings for FY 2012-13 before the State Commission, the State Commission has taken note of the aforesaid undertaking in the form of a letter, dated 18.8.2011 given by the Appellant-JSPL and reconfirmation of the said undertaking by the Appellant-JSPL itself during the various meetings. Then the State Commission correctly did not allow recovery of revised transmission charges and any interest on security deposit approved during the true-up for FY 2011-12.
- (c) that lastly, because of the its own undertaking, the Appellant-JSPL is not entitled to recover the revenue gap due to true-up for FY 2011-12 and the increased

transmission charges are undoubtedly part of the revenue gap and, therefore, the State Commission has rightly disallowed the claim of increased transmission charges claimed by the Appellant-JSPL.

17.3 After considering all the rival submission on this issue, we do not find force in the submissions of the Appellant-JSPL and the said contentions are rejected. Because of the undertaking given by the Appellant itself in the shape of a letter, dated 18.8.2011, and now, the Appellant-JSPL cannot be allowed to transgress the contents of the undertaking or letter, given by it, and the State Commission has correctly and properly acted upon the undertaking given by the Appellant, in the impugned order. The contentions of the Respondents-State Commission, on this issue have substance and merit and the same are accepted. Consequently, we agree to the findings recorded by the Respondent-State Commission and **accordingly, this issue i.e. Issue No. I is also decided against the Appellant.**

18. In view of the above discussions, both the Appeals, being Appeal Nos. 213/2013 and 214/2013, are allowed in part as indicated above.

19. **Summary of our findings:**

19.1 The State Commission has rightly rejected the segregated accounts filed by the Appellant-JSPL and rightly disallowed the various capital cost and expenses due to absence of segregated audited accounts with regard to the distribution business of the Appellant-JSPL. The accounts prepared for the distribution business of the Appellant/JSPL-D were barely extractions from the audited accounts of the parent company i.e. JSPL based on certain assumptions and the audited accounts submitted by JSPL did not comply with the CSERC (License) Regulations, 2004 and, there was no opinion from the Auditor with respect to whether the accounts prepared gives true and fair view of the JSPL-licensed distribution business. The State Commission has

legally rejected the segregated accounts filed by the JSPL-D for its distribution licensed business on the ground that the account book or book keeping was not done separately for the distribution business and the accounts did not reflect the actual expenditure with respect to its distribution business. However, we have given liberty to the Appellant to prepare separate accounts for their distribution business duly certified by the statutory auditors as sought by the State Commission and the State Commission shall consider the same in the final true-up of the accounts. The auditors will also certify the common expenses apportioned to the distribution business as true and fair view of the JSPL's distribution business.

19.2 The State Commission has rightly rejected the segregated accounts of JSPL-D and has rightly not considered the operation & maintenance expenses submitted by JSPL-D in its accounts for FY 2011-12 in determination of the base year expenses. The State Commission has legally proceeded on the basis that the segregated accounts for FY 2011-12, submitted by JSPL-D cannot be considered at all for determination of base year tariff because the same were not audited. The State Commission, after applying prudence check, correctly decided the operation and maintenance expenses for the control period on the basis of approved expenses for previous three years i.e. 2009-10, 2010-11 and 2011-12 on the ground of non-availability of audited segregated accounts.

19.3 Since the Appellant-JSPL-D, in MYT petition, has not provide satisfactory information to substantiate its claim of Rs.3287.41 lakhs towards gross fixed assets. The State Commission, after reviewing the assets of the JSPL distribution business during the processing of the previous year petitions i.e. FYs 2009-10, 2010-11 & 2011-12, has ascertained that the gross fixed assets of Rs.2235.83 lakhs corresponding to 2 nos. of transformers and supporting infrastructure was adequate for meeting the demand in the distribution area of the

Appellant-JSPL-D. In absence of additional supporting documents, provided by JSPL in the subsequent petitions, the State Commission has rightly not differed or revisiting the gross fixed assets approved in the previous tariff orders and rightly considered the same for ARR determination of JSPL-D for the control period FY 2013-14 to FY 2015. However, there is merit in contention of the Appellant that if the State Commission approves a lower Gross Fixed Assets than sought by the Appellant, the equity and debt should be reduced proportionately. Accordingly, this matter is remanded to the State Commission for reconsideration.

19.4 The State Commission has committed no illegality when the equity has approved by the State Commission for previous years has been taken as equity for FY 2013-14 to 2015-16 because the JSPL-D had not submitted cash flow statement for FY 2010-11 or FY 2011-12 for substantiating the claim of repayment of the entire loan amount and also the officials of JSPL-D admitted that there is no actual segregation of JSPL-D from the parent JSPL and the segregated accounts are prepared just for regulatory accounting. Since the JSPL has practically refinanced the ICICI loan from its parent company infusing part equity (to make equity portion 30% from earlier claimed 7%) and part loan. The JSPL-D has figuratively repaid the existing loans by infusing equity into the project which in turn increased the financing cost of the project hence the refinancing, which exchanged cheaper loan to expensive equity, cannot be allowed. The State Commission has rightly calculated the Consumer Security Deposit held by JSPL as Rs. 2149.70 lakhs as against the actual closing balance of Rs. 2,043.49 lakhs. The State Commission has computed the interest on the balance of consumer security deposit for FY 2012-13 at the interest rate 8.5% as per prevailing RBI bank rates as on 1.4.2013. However, the actual data of consumer security may be considered by the State Commission at the time of true-up for the FY 2013-14.

19.5 The State Commission has rightly disallowed the provision for Bad Debts and the recovery of revenue gap approved during true-up for 2011-12 has rightly not been allowed by the State Commission.

19.6 The State Commission has rightly disallowed recovery of revised transmission charges and interest on security deposit approved during true-up for 2011-12.

20. 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.

PRONOUNCED IN THE OPEN COURT ON THIS 1ST DAY OF JULY, 2014.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ **REPORTABLE/NON-REPORTABLE**

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