IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO. 226 and 227 OF 2013

Dated: 5th February, 2015

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 .... Appellants/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

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The Appeal No. 226 of 2013 has been filed by the Appellant/Petitioner – Jindal Steel and Power Limited (in short, **'JSPL'**), under Section 111 of the Electricity Act, 2003, against the order, dated 12.7.2013, passed by the Chhattisgarh State Electricity Regulatory

Commission (in short, the '**State Commission'**) in Petition No. 50(T) of 2012, whereby the State Commission has determined the Aggregate Revenue Requirements for the control period of FY 2013-14 to FY 2015-16 and the Transmission Charges for FY 2013-14 for the Appellant's Transmission Business.

2. The Appeal No. 227 of 2013 has been filed by the same Appellant/Petitioner (**JSPL**), under Section 111 of the Electricity Act, 2003, against the order, dated 10.7.2013, passed by the Chhattisgarh State Electricity Regulatory Commission (in short, the '**State Commission'**) in Petition No. 40(T) of 2012, in the matter of True-up of Annual Revenue Requirement for the licensed transmission business for FY 2010-11 and FY 2011-12 and petition for Annual Revenue Requirement for the licensed business for FY 2012-13, whereby the State Commission has determined the Annual Revenue Requirements for the FY 2012-13 and True-up for FYs 2010-11 & FY 2011-12 for the Appellant's Transmission Business.

3. Since, the common issues are involved for our consideration in both the aforesaid Appeals filed by the same Appellant-Petitioner i.e. JSPL, we have heard them together and now, we are deciding both the Appeals together by this common judgment.

4. The relevant facts giving rise to both the Appeals are stated as under:

(a) that the Appellant-Petitioner (JSPL) had been granted a transmission license, vide order, dated 20.6.2008, for two transmission lines i.e. (a) 220 KV double circuit transmission line from JSPL to O.P. Jindal Industrial Park, Punjipatra (23.7 km) and, (b) 220 KV double circuit transmission line from O.P. Jindal Industrial Park, Punjipatra to Jindal Power Limited (19.5 Km).

(b) that the Appellant-Petitioner (JSPL) had also been granted a distribution license, vide order, dated 29.11.2005, for distribution and retail supply of electricity for the area of O.P. Jindal Industrial Park established in District Raigarh, Chhattisgarh and in the area of villages Tumdih and Punjipatra of Gharghoda Tehsil.

(c) that the Appellant's distribution business utilizes the transmission lines of JSPL and is, therefore, a customer of JSPL's transmission business and liable to pay transmission charges.

(d) that the Respondent No.1 is the State Electricity Regulatory Commission, empowered to discharge functions under the Electricity Act, 2003.

(e) that Jindal Strips Limited (the predecessor of JSPL) was granted a transmission license by the Madhya Pradesh Electricity Regulatory Commission, vide order, dated 2.2.2000, for transmitting power from its captive power plant to its steel plant. After the enactment of the Electricity Act, 2003, and constitution of Chhattisgarh State Electricity Regulatory Commission, Petition No. 22 of 2006 (L), was filed related to the transmission license granted to JSPL, and in the said proceedings, the State Commission confirmed that transmission license was not required with regard to the above lines as they were dedicated transmission lines.

(f) that on 25.8.2007, JSPL applied for revival/re-organization and amendment of its transmission license, dated 2.2.2000. The State Commission, vide order, dated 1.9.2007, provisionally revived the transmission license, dated 2.2.2000. Subsequently, the State Commission granted a transmission license to JSPL, vide order, dated 20.6.2008 for the aforesaid two transmission lines of 220 KV double circuits.

(g) that the Appellant/JSPL is engaged in several business activities including mining of raw-material, manufacture of iron and steel. JSPL has established its manufacturing facilities at Raigarh in the State of Chhattisgarh. The generation, transmission and distribution of electricity under the license granted by the State Commission came into being because of the existing licensee, Chhattisgarh State Electricity Board being unable to supply electricity in the area at the relevant time. JSPL prepares an integrated annual account. It had historically reported the financial information under broad business segments as per Accounting Standard AS-17, issued by Institute of Chartered Accountants of India (hereinafter referred to as 'ICAI').

(h) that the size of the transmission business of Jindal Steel is small compared to overall operations of JSPL. Further, there are number of common expenses and shared fixed assets allocation for these business and, therefore, the segregation process was not simple and was a continuous process.

(i) that JSPL segregated the financial transactions for its transmission business from its other businesses for the FYs 2009-10 and 2010-11 and the basis for segregation was submitted along with a Petition No. 7 of 2011, being Tariff Petition for FY 2011-12. The basis for segregation was as under:

(i) ***<u>Segregation of Fixed Assets</u>***: Segregation of fixed assets was done on a functional basis. Assets being engaged in the licensed transmission business had been transferred to a new accounting unit created specifically for the licensed transmission business and has been considered as assets utilized in the licensed transmission business. For the purpose of segregation of fixed assets pertaining to transmission business, JSPL had divided the fixed assets into two broad segments

- Fixed assets in respect of 220 KV double circuit transmission line from JSPL to O.P. Jindal Industrial Park, Punjipatra; and
- Fixed assets in respect of 220 KV double circuit transmission line from O.P. Jindal Industrial Park, Punjipatra to Jindal Power Limited.

(ii) ***Segregation of Provision of Depreciation***: The provisions for depreciation have been projected on the basis of segregated fixed assets and annual depreciation charges computed on the rates for depreciation prescribed by the Central Electricity Regulatory Commission (CERC) considering the acquisition date and the date of commencement of operation (whichever is later) of the fixed assets.

(iii) ***Identification and Segregation of the Current Assets and Current Liabilities***: The projections for sundry debtors for FY 2011-12 were made on the basis of receivables of two months for revenue from the transmission charges assuming that any receivables at the end of the financial year are realized during the subsequent financial year. The projection of inventory was made on the basis of norms prescribed for working capital loan under Clause 18 of CERC (Terms & Conditions for Determination of Tariff) Regulations, 2009 for FY 2011-12. In other words, the inventory for FY 2011-12 has been assumed equivalent to 15% of the O&M expenses. No segregated cash and bank balances for the transmission business segment have been considered, since, JSPL does not maintain separate bank accounts for the licensed electricity transmission business. All cash and bank requirements in respect of transmission business are being funded by the other business segments of the JSPL.

(iv) ***Share capital, Long-term Loans, Reserves & Surplus and Profit & Loss and Debit Balance***: JSPL has not undertaken any attempt to segregate the issued share capital and the Reserves and Surplus of the company between the electricity transmission business and the other businesses of the company. The funding of any capital expenditure has been considered to be met by the other business segments of JSPL. The balance under the head 'Share Capital' in respect of FY 2011-12, has been taken as zero. The accumulated balance of the profit & loss account for the licensed transmission business is being shown under the head 'Reserves & Surplus' on the liability side of the balance sheet. For the purpose of segregation of financial data for the transmission licensee, there is no term loan directly attributable to the fixed assets of the licensed electricity transmission business. The fixed assets directly allocable to the licensed transmission business have been assumed to be funded by JSPL's other business segments.

(v) ***Segregation of Expenditure***: The process for the segregation of accounts has been initiated and the expenditure pertaining to transmission business, such as repair & maintenance expenses (R&M), administration & general expenses (A&G) and other transmission related expenses would be recorded separately in the newly created accounting unit during FY 2011-12. However, the petition for the year 2011-12 also covered the expenses incurred during FY 2009-10 and FY 2010-11, for which separate accounting code has been created in JSPL's book of accounts and all financial and accounting transactions relevant to the licensed transmission business would be prospectively recorded under this code from the year 2010-11 onwards. JSPL has allocated the consolidated accounts between the licensed and non-regulated business segments of JSPL using the same principles used for the segregation of accounts for FY 2010-11, which segregation of accounts by JSPL was certified by the JSPL's Statutory Auditor vide letter, dated 30.7.2011.

(j) that on the basis of segregation, a fixed assets and expense details for FY 2010-11 for the transmission business was prepared and was duly certified by the Statutory Auditor for JSPL's consolidated business and communicated to the State Commission, vide letter, dated 30.7.2011. The above fixed assets statement did not include the costs pertaining to SCADA and the same was updated in the Petition No. 7 of 2011, for the year 2011-12. The State Commission, vide order, dated 30.12.2011, did not accept the above certified statement of fixed assets and expenses and directed JSPL to submit the audited accounts for the transmission business. The State Commission, further, allowed the cost incurred by JSPL for 8 bays of the transmission network as against 16 bays claimed by JSPL.

(k) that on 30.1.2012, JSPL filed a Review Petition being Petition No. 11 of 2012, seeking review of the rejection of auditor certified Statement of Fixed Assets and expense details and disallowance of costs associated with 8 bays of the transmission network but, the State Commission, vide order, dated 11.3.2013, has upheld its order on the above two issues and rejected the review petition.

(l) 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 (cost centre P19161130). The said financial statements have been certified by the Statutory Auditors of JSPL to be part of the audited book of accounts of JSPL. The Statutory Auditor has also certified the basis for segregation of the said financial statements.

(m) that, on 12.7.2012, JSPL filed impugned petition being Petition No. 40(T) of 2012 for determination of Annual Revenue Requirement for transmission business for FY 2012-13 and true-up for FY 2010-11 and 2011-12 on the basis of segregated accounts for FY 2011-12 and sought approval for Annual Revenue Requirement of Rs. 1865 lakhs for FY 2012-13 and true up of Annual Revenue Requirement for FY 2011-12 to Rs. 1415 lakhs under Section 61, 62 and 86(1)(a) of the Electricity Act, 2003, along with the relevant provisions of the Chhattisgarh State Electricity Regulatory Commission's Conduct of Business Regulations and Terms & Conditions for Determination of Tariff Regulations, 2006 (hereinafter referred to as 'Tariff Regulations, 2006), which has been disposed of by the State Commission by the impugned order, dated 10.7.2013 (subject matter of challenge in Appeal No. 227 of 2013).

(n) that for the period 1.4.2013 to 31.3.2016, the State Commission framed Chhattisgarh State Electricity Regulatory Commission (Terms & 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 (hereinafter referred to as

'Tariff Regulations, 2012), inter-alia, providing for the norms and parameters applicable for determination of tariff for the transmission licensees.

(o) that the JSPL filed its Petition for determination of Annual Revenue Requirement for Transmission Business for the control period from FY 2013-14 to FY 2015-16 and determination of transmission charges for FY 2013-14, being Petition No. 50(T) of 2012 on 4.12.2012, which has been disposed of by the impugned order, dated 12.7.2013 (subject matter of challenge in Appeal No. 226 of 2013).

5. The main grievances of the Appellant in Appeal No. 227 of 2013 are as under:

(a) that the State Commission has failed to appreciate that the transmission licensee is entitled to the transmission charges on cost plus basis and the actual cost of the transmission licensee must be reflected in the transmission charges subject to appropriate prudence check by the State Commission. The State Commission has approved the Annual Revenue Requirement of Rs.762.88 lakhs for the year 2012-13 as against Rs.1865 lakhs claimed by JSPL and Rs.744.78 lakhs for the True-up of 2011-12 as against Rs.1415 lakhs claimed by JSPL, without rejecting the claim on appropriate prudence check.

(b) that the State Commission has erred in rejecting the Auditor's Certified segregated accounts submitted by JSPL even though the said accounts were prepared on the basis of specially created separate cost centre "Business Area 1900 (cost centre P19161130)", related to the transmission business of JSPL.

(c) that the State Commission has also 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 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.

(d) that the State Commission has failed to appreciate that CSERC (License) Regulations, 2004, cannot override provisions of the Companies Act, 1956 because of a principle that a subordinate legislation must not only be in conformity with the provision of parent Act but must also be in conformity with any other Act. The Companies Act, 1956 does not provide for preparation of audited accounts for each division of a company.

(e) that the State Commission has also erred in relying upon the standard rates of Chhattisgarh State Power Transmission Company Ltd. for determination of costs of the assets.

(f) that the State Commission has also failed to appreciate the transmission charges applicable to the only consumer of JSPL (i.e. distribution business of JSPL) would be 25% of the total Annual Revenue Requirement of JSPL's transmission business as the utilization of the total capacity of the transmission lines by JSPL, as a distribution licensee, is only 100 MW out of total transmission capacity of 400 MW. By disallowing capital costs and operation and maintenance expenses being beyond what is necessary for the small consumer base of JSPL, the State Commission is subjecting JSPL to double deduction on account of small consumer base which is contrary to the cost plus regime under the Electricity Act, 2003. The State Commission can either disallow capital cost and operation & maintenance expenses on the basis of small consumer base or allow Annual Revenue Requirements proportionate to the actual utilization of the consumer, but cannot do both.

(g) that the State Commission has erred in disallowing the costs and expenses related to 8 bays without considering that all the 16 bays together with the lines and the loop-in-loop-outs (LILO) constitute the transmission network of JSPL which was designed to cater to 299 MW connected load.

(h) that the State Commission has also erred in determining the Annual Revenue Requirements for FY 2012-13 and True-up for FY 2011-12, as per the norms under CERC Tariff Regulations, 2004 with escalation rates based on Wholesale Price Index and Consumer Price Index even though CERC Tariff Regulations, 2009 had already been framed for the period 2009-2014 and determination of annual revenue requirements and tariff for the years beginning from 2009 were to be as per the norms under the CERC Tariff Regulations, 2009.

(i) that the State Commission has also erred in reducing the applicable interest rate for interest on working capital during the True-up Process for the year 2011-12. The State Commission had allowed the SBI PLR rates for the year 2011-12 but had applied the incorrect rates. The JSPL had, in a Review Petition, sought the application of correct rates but the State Commission, instead of increasing the interest rate, as per the capital figure of SBI PLR, further, reduced the interest rate.

(j) that the State Commission has erred in calculating the operation & maintenance expenses on the basis of approved expenses for the previous years 2009-10, 2010-11 and 2011-12 on the ground of non-availability of audited accounts even though the Tariff Regulations, 2012 allowed the calculation of operation & maintenance expenses on the basis of unaudited accounts.

(k) that on the basis of segregated accounts for 2011-12 and the norms and parameters under the Tariff Regulations, 2012, JSPL sought for approval of Annual Revenue Requirement amounting to Rs.1216.72 lakhs in FY 2013-14, Rs.1235.35 lakhs in FY 2014-15 and Rs.1258.03 lakhs in FY 2015-16.

(l) that, on 12.7.2013, the State Commission, vide impugned order, has inter-alia, rejected the segregated accounts for FY 2011-12 of JSPL and determined the annual revenue requirements for the year 2013-14 on the basis of its own assumptions. As a result, the State Commission has approved the Gross Fixed Assets of Rs.3000.53 lakhs as approved in the previous tariff order for 2011-12 as against Rs.4371.15 lakhs claimed by JSPL and substantiated by the Fixed Asset Statement and Statement of Affairs certified by the Statutory Auditors of JSPL. It is pertinent to note that the State Commission further, reduced Gross Fixed Assets, including number of bays on the transmission network on the basis of small consumer base. The State Commission has considered the above deductions despite the fact that the State Commission has allowed JSPL's transmission business to charge only 25% of its total Annual Revenue Requirements to its only customer i.e. JSPL's distribution business.

6. We have heard Mr. M.G. Ramachandran, the learned counsel for the Appellant-Petitioner and Mr. C.K. Rai, the learned counsel for Respondent. We have deeply gone through the evidence and other material available on record including the impugned orders passed by the State Commission and written submissions filed by the rival parties.

7. The following issues arise for our consideration in the instant Appeals:

(A) Whether the State Commission was correct in rejecting the segregated accounts filed by the Appellant (JSPL) and disallowing the various capital cost and expenses on the ground of absence of accounts, inspite of there being a duly certified statement by Statutory Auditor of the Company?

(B) Whether the State Commission was correct in considering reduced fixed assets for calculation of Annual Revenue Requirements of JSPL's transmission business on the basis that JSPL's small base of consumers does not require the huge capital expenditure?

(C) Whether the State Commission was correct in considering the reduced number of bays for calculation of Operation and Maintenance expenses of JSPL's transmission business on the basis that JSPL's small base of consumers does not require 16 bays even though the State Commission would only consider 25% of the ARRs for calculating transmission charges applicable to the only customer of JSPL's transmission business, which is JSPL's distribution business?

(D) Whether the State Commission was correct in calculating the operation and maintenance expenses for the previous years 2009-10, 2010-11 and 2011-12 on the ground of non-availability of audited accounts particularly when the Tariff Regulations, 2012 allow the calculation of operation and maintenance expenses on the basis of unaudited accounts?

(E) Whether the State Commission was correct in applying the CERC Tariff Regulations, 2004 even though the Regulations provided for norms only for the years 2004-09 and CERC

Tariff Regulations, 2009 had already been framed for the years 2009-14?

(F) Whether the State Commission was correct in reducing the interest rate from 11.75% to 10.53% on working capital during the true-up process?

Our issue-wise considerations are as under:

8. ***Issue No.(A):*** ***Whether the State Commission was correct in rejecting the segregated accounts filed by the Appellant (JSPL) and disallowing the various capital cost and expenses on the ground of absence of accounts, inspite of there being a duly certified statement by Statutory Auditor of the Company?***

Issue No.(D): ***Whether the State Commission was correct in calculating the operation and maintenance expenses for the previous years 2009-10, 2010-11 and 2011-12 on the ground of non-availability of audited accounts particularly when the Tariff Regulations, 2012 allow the calculation of operation and maintenance expenses on the basis of unaudited accounts?***

Since, both these issues are interwoven, we are taking-up and deciding them together.

8.1 On these issues, the following contentions have been made on behalf of the Appellant:

(a) that the State Commission has wrongly rejected the auditor certified accounts for the FY 2011-12 submitted by JSPL with regard to its transmission business on the basis that the same did not comply with CSERC (License) Regulations, 2004.

(b) that JSPL is engaged in several business activities, including mining of raw-materials, manufacture of iron and steel. JSPL has established its manufacturing facilities at Raigarh, Chhattisgarh. The generation, transmission and distribution of electricity under the license granted by the State

Commission came into being because of existing licensee, Chhattisgarh State Electricity Board being unable to supply in the area at the relevant time.

(c) that JSPL prepares integrated annual accounts for its entire business. JSPL had been historically reporting the financial information under broad business segments as per Accounting Standard AS-17 (segment reporting) issued by the ICAI. The size of the transmission business of JSPL is small compared to overall operations of JSPL. Further, there were number of common expenses and shared fixed assets in the business of JSPL. The segregation process was, therefore, not simple and was a continuous process.

(d) that for the FYs 2009-10 and 2010-11, JSPL segregated the financial transactions for its transmission business from its other businesses. Briefly, 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:

(i) ***Segregation of Fixed Assets***: Segregation of fixed assets was done on a functional basis. Assets being engaged in the licensed transmission business had been transferred to a new accounting unit created specifically for the licensed transmission business and has been considered as assets utilized in the licensed transmission business. For the purpose of segregation of fixed assets pertaining to transmission business, JSPL had divided the fixed assets into two broad segments

- Fixed assets in respect of 220 KV double circuit transmission line from JSPL to O.P. Jindal Industrial Park, Punjipatra; and

- o Fixed assets in respect of 220 KV double circuit transmission line from O.P. Jindal Industrial Park, Punjipatra to Jindal Power Limited.

(ii) ***Segregation of Provision of Depreciation***: The provisions for depreciation have been projected on the basis of segregated fixed assets and annual depreciation charges computed on the rates for depreciation prescribed by the Central Electricity Regulatory Commission (CERC) considering the acquisition date and the date of commencement of operation (whichever is later) of the fixed assets.

(iii) ***Identification and Segregation of the Current Assets and Current Liabilities***: The projections for sundry debtors for FY 2011-12 were made on the basis of receivables of two months for revenue from the transmission charges assuming that any receivables at the end of the financial year are realized during the subsequent financial year. The projection of inventory was made on the basis of norms prescribed for working capital loan under Clause 18 of CERC (Terms & Conditions for Determination of Tariff) Regulations, 2009 for FY 2011-12. In other words, the inventory for FY 2011-12 has been assumed equivalent to 15% of the O&M expenses. No segregated cash and bank balances for the transmission business segment have been considered, since, JSPL does not maintain separate bank accounts for the licensed electricity transmission business. All cash and bank requirements in respect of transmission business are being funded by the other business segments of the JSPL.

(iv) ***Share capital, Long-term Loans, Reserves & Surplus and Profit & Loss and Debit Balance***: JSPL has not undertaken any attempt to segregate the issued share capital and the Reserves and Surplus of the company between the electricity transmission business and the other businesses of the company. The funding of any capital expenditure has been considered to be met by the other business segments of JSPL. The balance under the head 'Share Capital' in respect of FY 2011-12, has been taken as zero. The accumulated balance of the profit & loss account for the licensed transmission business is being shown under the head 'Reserves & Surplus' on the liability side of the balance sheet. For the purpose of segregation of financial data for the transmission licensee, there is no term loan directly attributable to the fixed assets of the licensed electricity transmission business. The fixed assets directly allocable to the licensed transmission business have been assumed to be funded by JSPL's other business segments.

(v) ***Segregation of Expenditure***: The process for the segregation of accounts has been initiated and the expenditure pertaining to transmission business, such as repair & maintenance expenses (R&M), administration & general expenses (A&G) and other transmission related expenses would be recorded separately in the newly created accounting unit during FY 2011-12. However, the petition for the year 2011-12 also covered the expenses incurred during FY 2009-10 and FY 2010-11, for which separate accounting code has been created in JSPL's book of accounts and all financial and accounting transactions relevant to the licensed transmission business would be prospectively recorded under this code from the year 2010-11 onwards. JSPL has allocated the consolidated accounts between the licensed and non-regulated business segments of JSPL using the same principles used for the segregation of accounts for FY 2010-11, which segregation of accounts by JSPL was certified by the JSPL's Statutory Auditor vide letter, dated 30.7.2011.

(e) that 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 the Revenue Requirements of the transmission activities of JSPL. The State Commission, vide its order, dated 30.12.2011, did not accept the above certified statement of fixed assets and expenses and directed JSPL to submit the audited accounts for the transmission business. JSPL filed a review of the order, dated 30.12.2011, which was also rejected by the State Commission vide its order, dated 10.3.2013.

(f) that for FY 2011-12, JSPL recorded all the financial transactions relevant to the licensed transmission business in the separate Business Area 1900 (cost centre P19161130). The basis for recording the transactions in the said business area is based on the segregation of accounts carried out in FY 2010-11 and submitted with the State Commission. The financial transactions of JSPL related to other business are not recorded in the above cost centre. It is clear that JSPL had segregated and ring fenced the accounting of the transactions pertaining to the licensed transmission activities by creating a separate cost centre in JSPL's books of accounts.

(g) that on the basis of the Business Area 1900, the Profit and Loss Statement and Statement of Affairs for the transmission business were prepared. Since the financial transactions related to other businesses of JSPL are not recorded in the said Business Area, they do not form part of accounts prepared by JSPL related to its transmission businesses. The said financial statements have been certified by the Statutory Auditor of JSPL to be part of the audited book of accounts of JSPL. Further, the Statutory Auditor has also certified the basis for segregation of the aforesaid financial statements.

(h) that JSPL is engaged in multiple businesses other than transmission and there is no separate company registered to carry out the licensed business. 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. Hence, JSPL cannot submit separate audited accounts for its transmission business because as per Companies Act, 1956, there cannot be two sets of audited accounts for the same Company. 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.

(i) that the Statutory Auditors had audited the accounts for JSPL as a whole, inclusive of all operations and businesses of JSPL and prepared the Auditor Report for the entire accounts wherein the Auditor has stated that the accounts are true and represent fair view of the business of the Company. The Auditor has, further, certified that the accounts related to transmission business form integral part of the audited accounts and the same are prepared using data extracted from the audited books of accounts. The Auditor cannot provide an Auditor's Report for each segment of the Company; segment reporting can be and is done by creating a separate cost centre for each segment of the Company and the Auditor's certification of the accounts of each segment is equivalent to the audited report of such accounts. Such certificate along with the main Audit Report for JSPL as a Company is adequate proof of the actual expenses and capital cost incurred by the transmission business of JSPL.

(j) 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 v. State of Kerala (2006) 4 SCC 327; Damodar Valley Corporation v. Central Electricity Regulatory Commission and others, vide order, dated 23.11.2007 in Appeal No. 271, 273 and 275 of 2006; and Mathew Antony v. Oriental Bank of Commerce AIR 2013 Ker 124.

(k) that an 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 transmission business of JSPL contrary to the provisions of the Companies Act.

(l) that the State Commission has wrongly rejected the accounts submitted by JSPL with the Auditor's Report without granting an opportunity to JSPL to substantiate the accounts or clarify the nature of the accounts submitted by JSPL. The accounts were submitted by JSPL on 10.10.2012, and the State Commission had not expressed any dissatisfaction with the said accounts till the passing of order, dated 10.7.2013. The State Commission ought to have informed JSPL of the insufficiency in accounts prior to passing the impugned order, dated 10.7.2013.

(m) that the certificate of the Statutory Auditor related to the segregated accounts for the transmission business of JSPL is adequate and ought to have been accepted by the State Commission and during the discussion held by JSPL with its Statutory Auditor on this point, the JSPL was informed by its Auditors that the Auditors cannot prepare an independent balance sheet for the licensed business. The Appellant, vide its 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, but in response to it, the Statutory Auditor agreed to an independent verification, identification of the assets and expenses exclusively related to the transmission businesses and the apportionment of common/shared assets, cost and expenses and certify an audited statement of accounts representing the true and fair view of the financials of the transmission business of JSPL.

(n) that the State Commission, in its impugned order, dated 10.7.2013, had envisioned a final true up of the year 2011-12 on the basis of segregated audited accounts observing in para 5.11 of the order, dated 10.7.2013, as under:

> *"5.11 In view of the above discussions, the Commission has carried out provisional truing 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."*

(o) that the Statutory Auditors of JSPL have sought for a period of two months to conduct the independent verification and certification and then JSPL would submit the above accounts and certificate/audited statement certifying that the accounts represent a true and fair view of the accounts related to the transmission business and in view of the same, the State Commission may now consider such accounts for true up of

2011-12, 2012-13 and 2013-14 and for determination of tariff for subsequent years. Thereafter, JSPL will be in a position to make available the audited accounts of the transmission 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 and loss account all the essentials of the duly audited accounts will be available to the State Commission to undertake the truing-up exercise as mentioned in the impugned order. The State Commission should now be directed to consider such audited accounts and undertake the true-up exercise.

(p) that JSPL had filed Appeals against the orders, dated 10.7.2013 and 12.7.2013 (impugned order in both the Appeals before us), passed by the State Commission with regard to the distribution business of JSPL, wherein the State Commission had rejected the segregated accounts of JSPL being Appeal Nos. 213 and 214 of 2013, in which this Appellate Tribunal, has recently vide its judgment, dated 1.7.2014, observed inter-alia, as under:

> *"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."*

8.2 ***Per contra***, the following submissions have been made on behalf of the Respondent/State Commission on these issues i.e. Issue Nos. (A) & (D):

(a) that this issue is squarely covered by the judgment, dated 1.7.2014, passed by this Appellate Tribunal, in Appeal No. 213 of 2013 and 214 of 2013, in the matter of Jindal Steel and Power Ltd. vs. Chhattisgarh State Electricity Regulatory Commission, which Appeals were filed by the same Appellant i.e. JSPL against the same impugned orders, dated 10.7.2013 and 12.07.2013, passed by the State Commission with regard to the distribution business of the Appellant.

(b) that against the same impugned orders, dated 10.7.2013 and 12.07.2013, which are the subject matter in the instant Appeals, the same legal point has been challenged with regard to the transmission business of JSPL. Hence, the law laid down by this Appellate Tribunal in its judgment, dated 1.7.2014, is fully applicable to the aspect of transmission business of the same Appellant. It means that the law laid down regarding segregation of accounts filed by the same Appellant regarding distribution business of the Appellant shall apply to the segregation of accounts filed by the Appellant with regard to the transmission business of the same Appellant.

(c) that the State Commission, in the impugned order, dated 10.7.2013, has dealt this issue no. (A), in detail under various heads and has reiterated its reasoning for non acceptance of the purported segregated accounts. It is evident from the relevant portion of the impugned order, dated 10.7.2013, passed by the State Commission that JSPL did not file its segregated audited accounts for FY 2010-11 hence, the Commission took the view that there is no reason to deviate from ARR approved for FY 2010-11 in the previous order. The Commission has also observed that the audited accounts submitted by JSPL did not meet the requirement as prescribed in the CSERC (License) Regulations, 2004, as there was no opinion from the Auditor with respect to whether the accounts prepared give true and fair view of the JSPL-licensed transmission business, the accounts prepared for the transmission 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 and, therefore, the Commission was of the opinion that the account preparation was merely an extraction exercise as per the financial and accounting principles and the adequacy or the appropriateness of the assets from the technical perspective has been ignored. The Commission, in the impugned order, has also observed that JSPL has not been able to provide satisfactory response regarding the adequacy and the technical requirement of the assets created with respect to that of the demand/load/ energy flow into the system and hence, the Commission did not accept the audited segregated accounts for the transmission business submitted by JSPL. Further, JSPL has also not submitted energy meter readings for the transmission system and, therefore, it was difficult to ascertain whether the whole system is used for JSPL-D only. Further, it was also not made clear whether the assets were originally created with the intent of serving the existing consumers only whose load is low with respect to the transmission assets created. Consequently, the State

Commission took the view that the loading of the entire system on consumers of JSPL-D is not justified because JSPL had neither submitted any energy audit report backed with boundary meter downloads for substantiating the claim that the assets were dedicated for the licensed business only. Consequently, the State Commission has decided to continue with the asset base as approved in the last tariff order along with its class-wise break up.

(d) that the State Commission on examining the segregated accounts submitted by JSPL-T has observed in the impugned order that the accounts have been prepared considering the audited accounts of parent company JSPL. The Commission has not been convinced regarding the reasonableness of expenditure shown in the segregated books of account and, hence, the Commission has considered the approved prudence check in its order for approving the ARR for FY 2012-13. As per the license condition, the licensee is required to maintain separate books of accounts of the regulated business and, therefore, for the subsequent years, the licensees has rightly been directed by the State Commission, vide its impugned order, to commence separate account keeping for the regulated business and prepare separate accounts and get the same audited.

(e) that the State Commission, while determining the ARR for transmission business in the previous orders, has followed a methodology of benchmarking the cost of the transmission assets of JSPL with other transmission licensee and, hence, the Commission has adopted prudence check and detailed scrutiny of the audited accounts submitted by the JSPL-T and had considered 25% of the total transmission network attributable for supply of power to JSPL-D area keeping in view the capacity utilization of the transmission network.

(f) that JSPL has failed to comply with the repeated directions of the State Commission with regard to maintaining separate accounts and get the same audited and the State Commission, in the absence of correct segregated accounts, had no other alternative but to proceed on the basis of the data submitted by JSPL in its petition and carried out the prudence check. The State Commission, however, in the impugned order, has directed JSPL-T to file proper segregated accounts and audit the same.

(g) that the certificate of auditor, which the Appellant-JSPL has submitted in the impugned petition before the State Commission, is merely based on segment reporting data of power business of JSPL Group. This does not conform the requirement for computation of ARR of licensed transmission business of JSPL. For proper estimation of assets and for computing ARR of transmission business of JSPL, it is necessary that JSPL-T separates it transmission business accounts from the other business carried out by it. The auditor certificate submitted in the impugned petition does not reflect about the assets of transmission business of JSPL and operation & maintenance expenses of licensed business, so, the Commission has not accepted the auditor allocated statement certified for assets and operation & maintenance expenses.

(h) that <u>the State Commission, in the impugned orders, has already given liberty to the Appellant that their final true-up shall be undertaken after the receipt of audited segregated accounts as per Companies Act, 1956 and CSERC (License) Regulations, 2004</u>.

(i) that this Appellate Tribunal, in Appeal No. 89 of 2012 (Raigarh Ispat Udyog Sangh vs. Chhattisgarh State Electricity Regulatory Commission), took the view that in the absence of the segregated accounts of the distribution business, the State Commission could not undertake prudence check in determining the ARR and retail tariff of the Jindal Steel. The prudence check is an essential part of the process of tariff determination and any expenditure incurred by any utility cannot be accepted by a Regulator on the face of it and passed on to the consumers and, hence, the Regulatory Commission is required to take into consideration the efficient working of a utility as also the interest of the consumers while determining the tariff and the State Commission in doing so, being a Regulator plays a role of internal auditor and it is not bound by the expenditure reflected in the accounts of the said distribution company.

(j) that further, Section 51 of the Electricity Act, 2003 dealing with the other business of the Distribution Licensees provides that a distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilization of its assets provided that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidized in any way such business undertaking nor encumbers its distribution assets in any way to support such business. Therefore, the Distribution Licensee is bound to maintain separate accounts for each such business undertaken to ensure that the Distribution Business does not get subsidized.

8.3 We have deeply considered and pondered over the rival submissions made by the parties, which have given above. We find full force in the counter submissions put-forth on behalf of the Respondent-State Commission. We do not want to reiterate the aforesaid counter submissions because that would simply increase the length of this judgment.

8.4 Against the same impugned orders, dated 12.7.2013 and 10.7.2013, the same Appellant namely; Jindal Steel and Power Limited (**JSPL)** filed Appeal Nos. 213 & 214 of 2013 regarding the Appellant's distribution business. This Appellate Tribunal, vide its judgment, dated 1.7.2014, in Appeal Nos. 213 & 214 of 2013, after consideration of the almost similar contentions raised on behalf of the Appellants, has partly allowed the aforesaid appeals directing the State Commission to pass a consequential order at the earliest. In the aforesaid judgment, we have dealt with the same and identical contentions of the Appellant and counter submissions of the same State Commission regarding the ARR/Retail Tariff for the distribution and retail business of the same Appellant-JSPCL and we have observed in our judgment, dated 1.7.2014, in Appeal No. 213 & 214 of 2013, as follows:

> *"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."***

8.5 Hence, the law laid down by this Appellate Tribunal in its aforesaid judgment, dated 1.7.2014, relating to the distribution and retail business of the Appellant, is fully applicable to the aspect of the transmission business of the same Appellant in the present appeals before us. It means that the law laid down regarding segregation of accounts filed by the same Appellant regarding distribution business of the Appellant shall apply to the segregation of accounts filed by the Appellant with regard to the transmission business of the same Appellant.

8.6 The State Commission, in the impugned order, dated 10.7.2013, has dealt with this issue in detail under various heads and has reiterated its reasoning for non-acceptance of the purported segregated accounts. It is further evident to us from the relevant portion of the impugned order, dated 10.7.2013, passed by the State Commission that JSPL did not file its segregated audited accounts for FY 2010-11, hence the State Commission took the view that there is no reason to deviate from ARR approved for FY 2010-11 in the previous order. The State Commission has also observed that the audited accounts submitted by the Appellant did not meet the requirement as described in 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 transmission business, as the accounts prepared in the transmission business were barely extractions from the audited accounts of the parent company i.e. JSPL based on certain assumptions as provided by the management of the company.

8.7 Further, it was also not made clear whether the assets were originally created with the intent of serving the existing consumers only whose load is low with respect to the transmission assets created. The Commission has rightly decided to continue with the asset base as approved in the last tariff order along with its class wise break up. The State Commission has not been convinced regarding the reasonableness of expenditure shown in the segregated books of account and hence, the

Commission has considered the approved prudence check in its order for approving the ARR for FY 2012-13. As per the license condition, the licensee is required to maintain separate books of accounts of the regulated business and, therefore, for the subsequent years, the licensee has rightly been directed by the State Commission, vide its impugned order, to commence separate account keeping for the regulated business and prepare separate accounts and get the same audited.

8.8 This Appellate Tribunal in Appeal No. 89 of 2012 (Raigarh Ispat Udyog Sangh Vs. Chhattisgarh State Electricity Regulatory Commission), took the view that in the absence of the segregated accounts of the distribution business, the State Commission could not undertake prudence check in determining the ARR and retail tariff of the Jindal Steel. The prudence check is an essential part of the process of tariff determination and any expenditure incurred by the Utility cannot be accepted by a Regulator on the face of it and passed on to the consumers and, hence, the Regulatory Commission is required to take into consideration the efficient working of a utility as also the interest of the consumers while determining the tariff and the State Commission, in doing so, being a Regulator plays a role of internal auditor and it is not bound by the expenditure reflected in the accounts of the said Distribution Company.

8.9 In view of the above discussions, we do not find any force or substance in any of the submissions/contentions made on behalf of the Appellant and we agree to the reasoning and findings recorded in the impugned orders passed by **the State Commission on these issues because the State Commission, in the impugned orders, has already given liberty to the Appellant that their final true-up shall be undertaken after the receipt of audited segregated accounts as per the Companies Act, 1956 and CSERC (License) Regulations, 2004**. We find no illegality or perversity in the impugned order on these issues leading to rejection of the segregated accounts filed by the Appellant.

Consequently, these issues i.e. Issue Nos. (A) & (D) are accordingly, decided against the Appellant. However, we give liberty to the Appellant to prepare separate accounts for their transmission 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 transmission business as true and fair view of the JSPL's transmission business.

9. ***Consideration of Issue Nos. (B) and (C):***

Issue No. (B): ***Whether the State Commission was correct in considering reduced fixed assets for calculation of Annual Revenue Requirements of JSPL's transmission business on the basis that JSPL's small base of consumers does not require the huge capital expenditure?***

Issue No. (C): ***Whether the State Commission was correct in considering the reduced number of bays for calculation of Operation and Maintenance expenses of JSPL's transmission business on the basis that JSPL's small base of consumers does not require 16 bays even though the State Commission would only consider 25% of the ARRs for calculating transmission charges applicable to the only customer of JSPL's transmission business, which is JSPL's distribution business?***

Since, both these issues are interwoven, we are taking-up and deciding them together.

9.1 On these issues, the following contentions have been made on behalf of the Appellant:

(a) that the State Commission has wrongly disallowed the claim of Gross Fixed Assets of the Appellant and relied on the standard rates of Chhattisgarh State Power Transmission Company Limited for determination of cost of assets.

(b) that the State Commission has further wrongly considered only limited assets of 8 bays as pertaining to the transmission business of the Appellant on the basis of actual utilization of the lines. Since the Commission was not convinced regarding the appropriateness of the proposed physical capacities of the assets and the cost (as appearing in the Accounts for FY 2011-12) being proposed to be charged to the transmission ARR, the Commission has decided to continue with the asset base as approved in the last tariff order.

(c) that the State Commission has wrongly observed in the impugned orders that the assets classified for Transmission License by the Appellant - JSPL-T are not reliable as the same is not based on proper segregated Audited Accounts for the Transmission License. The State Commission, for the purpose of calculating the actual cost, has not appropriately referred to CSPTCL's Estimated Sanctioned Rates (ESR) holding that these rates are reasonable and based on the verified records of the capital cost.

(d) that the State Commission has wrongly approved the Gross Fixed Assets of Rs.3001 lakhs as against a claim of Rs.4371.15 lakhs. The State Commission, in the impugned order, has wrongly calculated the revenue to be collected from transmission charges of the Appellant on the basis of actual utilization of the transmission lines. Therefore, JSPL only recovers 25% of its revenue requirements based on capacity usage of 100 MW by JSPL's distribution business as compared to the total capacity of 400 MW.

(e) that the State Commission has failed to consider that CSPTCL owns a large network and the cost for construction of such network would be divided across the large network and result in considerable economies of scale. On the other hand, JSPL has a limited length of transmission line and the costs are loaded only on such limited length. Therefore, the capital costs incurred by the CSPTCL cannot be a measure for determining the costs incurred by JSPL as their circumstances are completely different.

(f) that the State Commission has failed to appreciate that in a cost plus regime, the Appellant is entitled to its actual capital cost incurred by it, subject to prudence check by the State Commission. The State Commission is not entitled to disallow the costs actually incurred by the Appellant and allow the costs as per another transmission licensee.

(g) that the State Commission has further erred in considering the reduced fixed assets for calculation of Aggregate Revenue Requirements of the Appellant's transmission business on the basis that Appellant's small base of consumers does not require the huge capital expenditure even though the State Commission would only consider 25% of the Aggregate Revenue Requirements for calculating transmission charges as applicable to the only consumer i.e. distribution business of JSPL.

(h) that the Appellant had initially intended the supply of 299 MW of power to the Jindal Industrial Park on establishment of 70 Industrial Units in the said Park, JSPL was also granted the distribution license on 29.11.2005 for supply of 299 MW of power to the Jindal Industrial Park. Therefore, JSPL as a transmission licensee constructed the transmission lines and associated infrastructure such as bays etc. for transmission of such capacity. However, even though JSPL as a distribution licensee was entitled to supply 299 MW of power, the actual use of the transmission line capacity by JSPL's distribution business is only 100 MW. However, this does not change the actual capital costs incurred by JSPL for construction of transmission system for higher capacity and JSPL is entitled to claim the entire cost incurred by it.

(i) that the State Commission, keeping in mind the actual utilization of transmission capacity of the Appellant, had wrongly directed for transmission charges to be recovered to 25% of the total aggregate revenue requirements of the transmission business. Thus, the transmission charges payable by the distribution licensee is 25% of the total costs incurred by JSPL. By disallowing capital costs due to the small consumer base and further allowing only 25% of the ARR to be charged from consumer, the State Commission has subjected JSPL to double deduction on the ground of small consumer base which is contrary to the cost plus regime under Electricity Act, 2003. The State Commission can either disallow capital costs on the basis of small consumer base or allow annual revenue requirements proportionate to the actual utilization of the consumer, but cannot do both.

(j) that reduction in Gross Fixed Assets of JSPL has a cascading impact on other costs and expenses resulting in drastically Aggregate Revenue Requirements of JSPL. The reduced Gross Fixed Assets for calculation of ARR of the Appellant's transmission business on the basis that JSPL as small a consumer base does not require huge capital expenditure is perse-illegal and the State Commission was incorrect in considering the reduced fixed assets. This approach of the State Commission in reducing the fixed assets has a direct impact on the profitability and viability of the JSPL and would burden the non-transmission segments of JSPL, which is contrary to the cost plus regime under the Electricity Act, 2003.

9.2 ***Per contra***, the following submissions have been made on behalf of the Respondent/State Commission on these issues i.e. Issue Nos. (B) & (C):

(a) that with regard to the issue of disallowance of Gross Fixed Assets, despite repeated directions and persuasion of the State Commission, appellant has not submitted energy input and output data at meter installed at different voltage levels: source-wise and voltage-wise. In the absence of meter readings, it was difficult to verify as to whether the whole transmission capacity was used for the distribution purpose. JSPL has several captive plants and loads in the vicinity, in the absence of energy flow to-and-from transmission system, it was difficult to ascertain whether these loads and sources are using transmission capacity.

(b) that, further, the State Commission has been repeatedly directing JSPL-T to submit the Single Line Diagram of the transmission system being utilized in the licensed transmission system as per the provisions of license in order to understand the location and the details of equipment installed in the 220 kV switchyard submitted in the petition. However, the Appellant has not submitted the single line diagram for its transmission system till date.

(c) that the State Commission has rightly observed in the impugned order that there is no energy audit report backed with boundary meter downloads for substantiating the claim that the assets are dedicated for the distribution business. The State Commission has also rightly noted that JSPL has got approval for cost pertaining to the SCADA system, which is advanced data acquisition system, allocated to transmission business for the transmission system and, hence, the Appellant is under obligation to provide the readings procured from SCADA.

(d) that since the State Commission was not convinced regarding the appropriateness of the proposed physical capacities of the assets and the cost (as appearing in the Accounts for FY

2011-12) being proposed to be charged to the transmission ARR, the Commission has rightly decided to continue with the asset base as approved in the last tariff order.

(e) that since the Appellant/petitioner did not give details of arriving at the capital cost of transmission system, the Commission has rightly observed that the assets classified for transmission license by JSPL-T are not reliable as the same is not based on proper segregated audited accounts for the transmission license. Hence, the State Commission, for the purpose of calculating the capital cost, has rightly referred to CSPTCL's Estimated Sanctioned Rates, as these rates are reasonable and are based on the verified records of capital cost.

(f) that since the State Commission did not find any reason to deviate from the methodology used by it in last tariff order for calculation of gross fixed assets, the Commission has rightly continued with the gross fixed assets of Rs. 3001 Lakhs. It was the admitted case of the Appellant that the Appellant had not added or removed any assets during the FY 2012-13 and since the Appellant had not challenged the last tariff order which has attained finality, the Appellant may now be estopped to challenge the same.

(g) that the State Commission has rightly considered total 8 numbers of bays in accordance with the methodology explained in the impugned order.

(h) That the State Commission has taken the right view that the proper auditing of transmission business has not been carried out, moreover, the accounting has only been carried out from the financial/accounting principles and JSPL has not satisfied the State Commission regarding the adequacy or appropriateness of the technical requirements of the assets created with respect to the demand/load of its consumer base.

9.3 After consideration of rival contentions on issue nos. (B) and (C), we note that despite repeated directions and persuasions of the State Commission, the Appellant has not submitted energy input and output data at meter installed at different voltage levels: source-wise and voltage-wise. In the absence of meter readings, it was difficult to verify as to whether the whole transmission capacity was used for the distribution purpose. The Appellant has several captive plants and loads in the vicinity and in the absence of energy flow to-and-from transmission system, it was difficult for the State Commission to ascertain these loads and sources using transmission capacity of the Appellant.

9.4 On perusal of the impugned order, dated 10.7.2013, we find that the Appellant has failed to submit SCADA extracted metered data at every voltage crossover points for the complete transmission system. In the absence of such data, it is difficult to ascertain whether the transmission system is used dedicatedly for its distribution consumer only and there is no import or export of energy from the mentioned transmission system other than that used by JSPL-T business. The State Commission appears to have rightly observed in its impugned order, dated 10.7.2013 that JSPL-T has claimed that the entire transmission system is being used by O.P. Jindal Industrial Park (OPJIP), i.e., for its distribution business only, with which all technical considerations do not appears to be correct to the State Commission. As per JSPL-T's own submission, its transmission network caters to multiple generation units and load centers to be serviced. The multiple power plants connected to the transmission lines include Jindal Power Limited (JPL) 4X250 MW plant and multiple captive power plants with total power generation capacity of 360MW. On this basis, the State Commission has rightly observed that the energy balance data submitted by JSPL-T is not reliable.

9.5 The Appellant-petitioner, through the instant petition, again claimed O&M charges for 16 Nos. 220 KV bays stating that all the 16 Nos. 220kV bays are related to its transmission business. The State Commission has further rightly observed that the Transmission License was granted for 2 Nos. double circuit 220KV lines – one from JSPL to OPJIP and other from OPJIP to JPL, and for the purpose of ascertaining fixed assets related to licensed transmission business, only those bays can be considered appropriate which are actually required for licensed transmission lines between OPJIP & JSPL and OPJIP & JPL at substations of OPJIP, JSPL and JPL. Despite repeated queries for submission of proper single line diagram for transmission system, by the Commission, the Appellant has failed to submit the same to the Commission and hence, the State Commission has rightly considered only 8 Nos. of 220KV bays i.e. two no. of bays at JPL end, four no. of bays at OPJIP (two for lines coming from JPL to OPJIP and two for the lines coming from JSPL to OPJIP) and another two at JSPL end for connecting the lines from JSPL to OPJIP for determination of ARR for FY 2011-12 and FY 2012-13.

9.6 The State Commission has rightly noted that the Auditor of the company has issued bare extraction certificate in respect of financial accounts based on the assumptions as provided by the company management and neither verification/technical auditing has been undertaken with respect to transmission network by the auditors nor any information regarding the business and accounts submitted by the Auditor. As per the auditor certificate, the information relating to JSPL's licensed transmission business has been prepared according to the information and explanations provided by the Company management. Therefore, the State Commission was of the opinion that the proper auditing of transmission system business has not been carried out, moreover, the accounting has only been carried out on the financial accounting principles and JSPL has not satisfied the State Commission regarding the adequacy or the appropriateness of the technical requirement of the assets created with respect to demand/load of its consumer base.

9.7 After considering the rival submission and perusing the impugned orders, particularly, reasoning given by the State Commission in the impugned orders, we do not find any force in the submissions/ contentions of the Appellant-petitioner. We find force and substance in the submissions made on behalf of the Respondent-Commission. We further agree to the findings recorded in the impugned orders on these issues and **consequently, these issues i.e. Issue Nos. (B) & (C) are accordingly, decided against the Appellants**.

10. ***Issue No. (E):*** ***Whether the State Commission was correct in applying the CERC Tariff Regulations, 2004 even though the Regulations provided for norms only for the years 2004-09 and CERC Tariff Regulations, 2009 had already been framed for the years 2009-14?***

10.1 On this issue, the following contentions have been made on behalf of the Appellant:

(a) that the State Commission has determined the Annual Revenue Requirements for FY 2012-13 and True-up for FY 2011-12 of the Appellant according to CERC (Terms and Conditions of Tariff) Regulations, 2004 with escalation.

(b) that the State Commission, in the impugned order, has noted that during the hearing on the Review Petition, the Commission accorded with JSPL's objection on being applied different methodology on computation or depreciation and O&M expenses and further noted that different Regulations for computation of depreciation and O&M expenses have indeed created an anomaly. To remove this anomaly and as the licensee had filed petition under CSERC (Terms and Conditions for determination of Tariff) Regulations, 2006, the Commission now decides that to arrive at O&M expenses of 2011-12, the O&M expenses of 2010-11 are escalated at the rate of inflation rate for the year. The Commission further made it clear that however, the Commission is not carrying out true up exercise for FY 2010-11, the O&M expenses of 2008-09 and FY 2009-10 shall be escalated at the rate of inflation for the respective years to reach at O&M expenses for FY 2009-10 and FY 2010-11 respectively.

(c) that CERC Tariff Regulations, 2004 provided the norms and parameters for determination of tariff for the period 2004-09 and cannot be applied for the years beyond the said control period. Since, the CERC Tariff Regulations, 2009 had already been framed for the period 2009-14 and determination of annual revenue requirements and tariff for the years beginning from 2009 were to be as per the norms and parameters under the CERC Tariff Regulations, 2009. Since, the Appellant's petition was for determination of annual revenue requirements for 2012-13 and True-up for 2011-12 and, therefore, the State Commission has committed illegality in applying CERC Tariff Regulations, 2004. The CERC Tariff Regulations, 2009 would be legally applicable.

(d) that the State Commission has referred to the Appellant's objection on the methodology adopted in the previous tariff order for application of the CERC Tariff Regulations, 2009. The Appellant had objected to the action of the State Commission in adopting different methodology for computation of depreciation and O&M expenses as the same created anomaly. The intention of JSPL in raising the said objection before the State Commission was that the same Regulations to all components should apply. However, the State Commission, ostensibly to remove the anomaly, in the impugned order, has applied CERC Tariff Regulations, 2004 to all components along with complicated calculations of escalation.

(e) that the State Commission has wrongly applied complex calculation of the various expenses by applying escalation rates based on Wholesale Price Index (WPI) and Consumer Price Index (CPI) on the norms and parameters for the base year 2008-09 to determine the ARR even though the norms and parameters for the years 2009-14 were already available. The State Commission could have applied only CERC Tariff Regulations, 2009 for the said control period 2009-14 and, therefore, the State Commission could not have applied CERC Tariff Regulations, 2004 for the period covered by CERC Tariff Regulations, 2009.

(f) that as per the contention and spirit of Tariff Regulations, 2006, the State Commission ought to have applied the applicable norms and parameters determined by the Central Commission, which for the years 2011-12 and 2012-13, are covered under the CERC Tariff Regulations, 2009.

10.2 ***Per contra***, the following submissions have been made on behalf of the Respondent/State Commission on this issue:

(a) that the State Commission has correctly applied the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 because the Appellant has filed ARR & Tariff Petition for FY 2012-13 in accordance with Chhattisgarh State Electricity Regulatory Commission (Terms & Conditions for determination of tariff according to Multi-year Tariff principles) Regulations, 2010 (in short MYT Tariff Regulations 2010). During the technical validation session (TVS) the State Commission had clarified to JSPL that the CSERC MYT Regulations, 2010 are applicable for only those utilities which are filing multi-year tariff petition and the CSERC (Terms and Condition for Determination of Tariff) Regulations, 2006 remain effective for utilities filing petition for single year ARR & Tariff. In view of the fact that JSPL-T has submitted its ARR and tariff petition for single year i.e. FY 2012-13, the Commission has processed the same based on the CSERC (Terms and Conditions for Determination of Tariff) Regulations, 2006 and has applied the norms and principles in accordance with CERC Tariff Regulations, 2004, as applicable.

(b) that the relevant clause of Object and Reason of MYT Tariff Regulations, 2010 is that Section 61 of the Electricity Act, 2003 mandates that the appropriate Commission shall specify the terms and conditions for determination of tariff and in doing so shall be guided interalia by multi-year tariff principle. The CSERC (Terms and Conditions of determination of Tariff) Regulations, 2006 did not embody the methodologies of multi-year tariff in detail and to meet the object of specifying the terms and conditions for the determination of tariffs according to multi-year tariff principles by the Commission for the supply of electricity to a distribution licensee by generating stations; transmission tariff; tariff for wheeling of electricity; and tariff for retail sale of electricity, the Commission notified the regulations namely CSERC (Terms and conditions of determination of tariff according to Multi-year tariff principles) Regulations, 2008. In these Regulations of 2008, it was specified that the Commission shall follow the principles and methodologies specified in the CERC (Terms and Conditions of Tariff) Regulations, 2004 for determination of tariff. The CERC (Terms and Conditions of Tariff) Regulations, 2004 came into force from 1.4.2004 and remained in force for a period of 5 years i.e. up to 31.3.2009. The State Commission has decided to make these new Regulations, which shall replace CSERC (Terms and conditions of determination of tariff according to Multi-year tariff principles) Regulations, 2008. However, CSERC (Terms and Conditions of determination of Tariff) Regulations, 2006 of the State Commission shall continue to remain in force for the purpose of filing of annual tariff petitions. Therefore, the State Commission has passed the impugned order as per the Regulations.

(c) that since petition from which the impugned order originated was a single year tariff petition for FY 2012-13, the State Commission has disposed the same in according to CSERC (Terms and Conditions for Determination of Tariff) Regulations, 2006, according to which CERC (Terms and conditions of Tariff) Regulations, 2004 were applicable. During the hearing of Review Petition No. 11 of 2012 before the State Commission, it was the submission of the Appellant that the Commission accorded with JSPL objection on applying different methodology on computation of depreciation and O&M. The Appellant has not challenged the order, dated 11.3.2013, passed in Petition no. 11 of 2012 and the same has attained finality.

10.3 We have considered the rival submissions on this issue of applicability of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 and we do not find any force in the contentions of the Appellant rather the counter submissions raised on behalf of the State Commission have legal force. The Appellant, a licensee, himself had filed a petition under CSERC (Terms and Conditions of determination of Tariff) Regulations, 2006 to remove the anomaly as to different Regulations for computation of depreciation and O&M expenses. The Commission has decided that to arrive at O&M expenses of 2011-12, the O&M expenses of 2010-11 are escalated at the rate of inflation rate for the year. The Commission has rightly processed the instant petition of the Appellant for determination of ARR and Tariff though for a single year 2012-13 and has rightly applied the norms and principles in accordance with CERC Tariff Regulations, 2004. Since, CSERC (Terms and Conditions of determination of Tariff) Regulations, 2006, did not have the methodology of multi-year tariff in detail, the State Commission in order to meet the objective, specifying the terms and conditions for the determination of tariffs according to multi-year tariff principles, had notified the regulations namely CSERC (Terms and conditions of determination of tariff according to Multi-year tariff principles) Regulations, 2008. In these Regulations of 2008 of the State Commission, it was specified that the Commission shall follow the principles and methodologies specified by the Central Commission in its CERC (Terms and Conditions of Tariff) Regulations, 2004. Consequently, the State Commission has correctly applied the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 while passing the impugned order. Thus, we do not find any kind of illegality or perversity in the impugned order on this issue. **Accordingly, this issue i.e. Issue No. (E) is decided against the Appellant**.

11. ***Issue No. (F):*** ***Whether the State Commission was correct in reducing the interest rate from 11.75% to 10.53% on working capital during the true-up process?***

11.1 On this issue, the following contentions have been made on behalf of the Appellant:

(a) that the State Commission has reduced the interest on working capital from 11.75% to 10.53% being weighted average of 10.25% and 10.75% (State Bank of India Prime Lending Rate [SBI PLR] as on 1.4.2004 and 21.6.2006) respectively.

(b) that the State Commission in the earlier Tariff Order, dated 30.12.2011, for FY 2011-12 had allowed the interest rate for the year 2011-12, as per SBI PLR as on 1.4.2011. The State Commission had considered the figure of 11.75%, which was incorrect figure as the average SBI PLR was 14.4% and the interest rate as on 1.4.2011 was 13%. This fact was duly pointed out by the Appellant in the Review Petition being Petition No.11 of 2012, wherein the Appellant submitted the correct rates. The State Commission has wrongly in the True-up Petition, further reduced the interest rate which requires the quashing of the impugned order, dated 10.7.2013.

11.2 ***Per contra***, the following submissions have been made on behalf of the Respondent/State Commission on this issue:

(a) that since the petition, filed by the Appellant, was for the single year tariff, the Commission has considered the petition in accordance with CSERC Tariff Regulations, 2006 which states that the Commission shall be guided by CERC Tariff Regulations, 2004 and, therefore, the State Commission has calculated working capital in accordance with the norms specified in CERC Tariff Regulations, 2004.

(b) that the State Commission has passed the impugned order according to the CSERC Tariff Regulations, 2006.

11.3 We have considered the rival submissions raised on behalf of the contesting parties on this issue of reduction of interest rate on working capital during the True-up process. Before we come to our conclusion, we deem it necessary to reproduce the relevant part of the impugned order, dated 10.7.2013, regarding this issue, which is as under:

"5.55 For the purpose of calculation of Working Capital, the Commission has considered the following:

a) 1/12 of O & M expenses considered by the Commission for FY2011-12,

b) Receivables equivalent to 2 months average billing (For this purpose the Commission has considered 2 months of Revenue considered in this Order)

c) Maintenance spares by calculating 1% of Opening GFA for FY 2007-08 and escalating it by 6% on y-o-y basis in accordance with the methodology adopted in previous order

5.56 Further as per CERC Tariff Regulations 2004 the rate of interest to be considered should be as per the stated provision "Rate of interest on working capital shall be on normative basis and shall be equal to the short-term Prime Lending Rate of State Bank of India as on 1.4.2004 or on 1st April of the year in which the project or part thereof (as the case may be) is declared under commercial operation, whichever is later. The interest on working capital shall be payable on normative basis notwithstanding that the *transmission licensee has not taken working capital loan from any outside agency."*

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5.58 In the tariff order for FY 2011-12 for JSPL-T, the Commission had made an inadvertent error and had considered the SBI PLR as on 1st April 2011. Applying the methodology described in Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for Determination of tariff) Regulations, 2006 read with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, the interest rate as on 1st April 2004 and 21st April 2006(which are dates of COD of transmission lines) was to be considered for computing working capital of first and second transmission line respectively. However as per data available the prevailing State Bank Prime lending Rate for the date 1st April 2004 and 21st Jun 2006 were 10.25% and 10.75% respectively. Such different rate of interest for different periods cannot be made applicable for calculation of interest on working capital required for each class of assets, Therefore, for the purpose of provisional true-up of FY 2011-12, the Commission has considered an weighted average interest rate of 10.53% in accordance with the CSERC Tariff Regulations 2006, which specifies that CERC Regulations, 2004 in this regard would be applicable".

11.4 After considering the rival submissions and impugned order on this issue, we are constrained to hold that the State Commission, in para 5.58 of the impugned order, dated 10.7.2013, has clearly noted that in the tariff order for FY 2011-12 for JSPL-T/Appellant, the Commission had made an inadvertent error and had considered the SBI PLR as on 1.4.2011. Applying the methodology described in Chhattisgarh State Electricity Regulatory Commission (Terms and Conditions for Determination of tariff) Regulations, 2006 read with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, the interest rate as on 1.4.2004 and 21.4.2006 (which are the dates of COD of transmission lines of the Appellant) was to be considered for computing working capital of first and second transmission line respectively. The Commission further noted in the impugned order that as per the data available, the prevailing State Bank of India Prime lending Rate for the date 1.4.2004 and 21.6.2006 were 10.25% and 10.75% respectively and such different rate of interest for different periods cannot be made applicable for calculation of interest on working capital required for each class of assets of the Appellant. The State Commission, for the purpose of provisional true-up of FY 2011-12, has considered a weighted average interest rate of 10.53% in accordance with the CSERC Tariff Regulations 2006, which specifies that CERC Tariff Regulations, 2004 in this regard would be applicable. Considering the reasoning given by the State Commission on this issue, we find that the contentions of the Appellant on this issue, do not hold water. We agree to the findings recorded by the State Commission on this issue. **Accordingly, this issue i.e. Issue No. (F) is decided against the Appellant**.

12. Since all the aforesaid issues have been decided against the Appellant, the instant Appeals being Appeal Nos. 226 & 227 of 2013 are liable to be dismissed.

13. **SUMMARY OF OUR FINDINGS**:

13.1 The State Commission was correct in rejecting the segregated accounts filed by the Appellant (JSPL) and disallowing the various capital cost and expenses on the ground of absence of accounts. Further, the State Commission was correct in considering reduced fixed assets for calculation of Annual Revenue Requirements of JSPL's transmission business on the basis that JSPL's small base of consumers does not require the huge capital expenditure.

13.2 We further note that the State Commission was correct in considering the reduced number of bays for calculation of Operation and Maintenance expenses of JSPL's transmission business on the basis that JSPL's small base of consumers does not require 16 bays. Though, the State Commission would only consider 25% of the ARRs for calculating transmission charges applicable to the only customer of JSPL's transmission business, which is JSPL's distribution business.

13.3 We further hold that the State Commission was correct in calculating the operation and maintenance expenses for the previous years i.e. 2009-10, 2010-11 and 2011-12 on the ground of non-availability of audited accounts of the Appellant. The State Commission was further justified in applying the CERC Tariff Regulations, 2004 and further in not applying CERC Tariff Regulations, 2009 for the purpose of determination of ARR for FY 2012-13 and True-up for FYs 2010-11 and 2011-12 for the Appellant's transmission business because Section 61 of the Electricity Act, 2003 mandates that the appropriate Commission shall specify the terms and conditions for determination of tariff and in doing so shall be guided interalia by multi-year tariff principle. Since, the State Commission had notified the CSERC (Terms and Conditions of determination of Tariff) Regulations, 2006 and further since CSERC Tariff Regulations, 2006 the did not have the methodologies of multi-year tariff in detail, the State Commission had to notify CSERC (Terms and conditions of determination of tariff according to Multi-year tariff principles) Regulations, 2008. In these Regulations of 2008, it was specified that the Commission shall follow the principles and methodologies specified in the CERC (Terms and Conditions of Tariff) Regulations, 2004 for determination of tariff. Accordingly, the State Commission has correctly applied the CERC (Terms and Conditions of Tariff) Regulations, 2004 and has rightly not applied CERC Tariff Regulations, 2009. We further hold that the State Commission was correct in reducing the interest rate from 11.75% to 10.53% on working capital during the true-up process of the transmission business of the Appellant. As according to the State Commission itself, in the tariff year 2011-12 for the Appellant-JSPL-T, the Commission had made an inadvertent error and had considered the SBI PLR as on 1.4.2011, which inadvertent error has been corrected by the State Commission in its impugned order, dated 10.7.2013.

14. In view of the above discussions, we do not find any merit in both these Appeals being Appeal Nos. 226 of 2013 and 227 of 2013, and they are hereby dismissed without any order as to costs. The impugned orders, dated 12.7.2013 and 10.7.2013, passed by the Chhattisgarh State Electricity Regulatory Commission in Petition Nos. 50(T) of 2012 and 40(T) of 2012 respectively, are hereby upheld.

PRONOUNCED IN THE OPEN COURT ON THIS 5th DAY OF FEBRUARY, 2015.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

√ **REPORTABLE/~~NON-REPORTABLE~~**

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