

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

**ORIGINAL PETITION NO.3 OF 2018 &
IA NO.470 OF 2018 &
IA NO.328 OF 2020**

Dated: **07.07.2022**

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

In the matter of:

JINDAL STAINLESS LIMITED

Regd Office at O.P. Jindal Marg,
Hisar-125 005
Haryana

And

Unit at Kaling Nagar Industrial Complex
P.O. Danagadi-755026
District Jaipur
Odisha

Through its Authorized Signatory

.... Petitioner(s)

VERSUS

1. BUREAU OF ENERGY EFFICIENCY

Ministry of Power, Government of India
4th Floor, Sewa Bhawan,
R.K. Puram
New Delhi-110 066
Represented by its Director General

2. M/S BICON CONSULTANTS PRIVATE LIMITED

Bangur Complex,
S-41, 5/7 BST Main Road
Kolkata 700 038
Represented by its Managing Director

3. THE STATE DESIGNATED AGENCY (SDA)

Government of Odisha
Office of the Engineer-in-Chief
Electricity-cum-Principal Chief Electrical Inspector (Odisha)
Power House Square, Unit-V,
Bhubaneswar 751 001
Odisha
Represented by Engineer-in-Chief
Electricity-cum-Principal Chief Electrical Inspector (Odisha)

4. UNION OF INDIA

Represented through the Secretary
Ministry of Power,
Shram Shakti Bhawan
New Delhi-110 001

.... Respondents

Counsel for the Petitioner(s) : Mr. Aditya N. Das, Adv
Mr. R.P. Panigrahi, AGM (Law)

Counsel for the Respondent (s) : Mr. Aamir Zafar Khan for R-1& R-4

J U D G M E N T(*Oral*)

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER (ELECTRICITY)

1. The present appeal has been filed by the Appellant i.e. Jindal Stainless Ltd (JSL), an industry engaged in the business of Steel & Iron (Sponge), under sections 31 and 31A of the Energy Conservation Act 2001 (as amended) challenging the calculation *vis-à-vis* empirical formula adopted by the first respondent, Bureau of Energy Efficiency (BEE) whereby the petitioner has been penalized due to non-achievement of target for energy saving and mandating purchase of energy saving certificates (EsCerts) to the tune of 12867 certificates as against the determination made by the Accredited Energy Auditors of BEE which provided for energy saving in the form of issuance of 47555 EsCerts in favour of Jindal Steels Limited (JSL).

2. The crux of the issue is the empirical formula used in calculation of the energy savings under the Perform Achieve and Trade (PAT) Scheme notified by Government of India, Ministry of Power on the

recommendation of Bureau of Energy Efficiency. The empirical formula under Cell No. H964, field of the excel sheet containing certain data for the purpose of calculations, as incorporated under the methodology prescribed for the purpose and notified under the PAT scheme, in the instant case, provides for submission of certain numerical value for the category of the said consumer which is falling under the category of iron and steel (sponge iron). However, as pleaded by the petitioner, the formula has been changed whereby the value of H964 cell is calculated on the basis of average of certain cells i.e. cell nos. E964, F964 and G964 of the excel sheet as against the prescribed formula of addition of cell nos. H962, H963 and H959.

3. By the change in methodology i.e. in the form of empirical formula, appellant has been penalized by mandating a purchase of additional EsCerts to the tune of 12867 nos. as against the energy saving equivalent to 47555 under the prescribed methodology.

4. The report submitted by the accredited Energy Auditor, M/s Bicon Consultants Private Limited (Respondent no.2) also supported the claim of the Appellant as is seen from its copy placed before us by the Appellant wherein it has been indicated that the petitioner is entitled for energy saving equivalent to the tune of 47555 EsCerts, also pointed out

the discrepancy in the calculation made by Bureau of Energy Efficiency.

The relevant portion of the report is quoted below:

“12.2 Discrepancies in calculations in Pro-forma and Normalization sheets

This report is being submitted as per the Sector Specific Pro forma vetted by ‘BEE’ on 8th January 2016. In this, the following observations are made :

(a) In row no. 590 the average GCV of coal used for power generation during the baseline period is shown as 3,023.83 Kcal/Kg. (as in the baseline report), whereas, the same is erroneously shown as 2,561.67 Kcal/Kg. in row 992.

(b) No credit has been given for the heat of steam exported to Recovery Type Coke Oven outside the plant battery limit during the Assessment Year (64,644 Million K. Cal) for which detailed meter readings had been given. The DC has been offered to furnish copies of logbooks.

(c) The formula used in cell H964 for Form Se2 of ‘JSL’ is $H964 = AVERAGEA(E964:G964)$, which is at variance with that used for other DCs in Iron & Steel Sector which reads as $H964 = H962 + H963 + H959$.

It may be mentioned that all the above have adversely affected the normalized ‘SEC’ of the Assessment Year. If the above points are taken into account, the normalized ‘SEC’ of the Assessment Year could work out lower than the set target of 0.989 TOE/T.”

5. A similar observation has also been made by the State Designated Agency (SDA) of the State of Odisha. After going through the Order issued by Bureau of Energy Efficiency certifying for minus 12867EsCerts as against the claim of 47555 EsCerts, it is clear that there is a discrepancy and arbitrariness on the part of Bureau of Energy Efficiency.

6. We are inclined to accept the submission of the Appellant that the methodology adopted in their case is different from the methodology adopted in all other cases benefitting the other nine companies falling under the same category, this having been confirmed by the auditor's report also.

7. On being asked the learned counsel for the first respondent fairly conceded that there no such provision existing under the PAT scheme by which the empirical formula can be changed for the calculation of the energy efficiency for a specific company nor there is any such power enjoyed by Bureau of Energy Efficiency under the Scheme.

8. From the above, it is clear that the appellant company has been penalized by using a different methodology *vis-à-vis* empirical formula for calculation of the energy saving as compared to any other industry/company falling under the same category. Such arbitrariness in exercise of dominant position of power used by Bureau of Energy Efficiency cannot be appreciated and accepted. As such, we are inclined to set aside the said order passed by the Bureau of Energy Efficiency through which the petitioner company has been mandated to purchase EsCerts to the tune of 12867 nos.

9. It has been submitted by the Appellant that the appellant company has already purchased the said EsCerts from the Government of India. As such, we direct the respondent to issue necessary directions for compensating and allowing the company to convert those EsCerts, as per its eligibility, into the tradable certificates in favour of the company so that the loss incurred by the company is fully compensated.

10. The first respondent Bureau of Energy Efficiency is also directed to rectify the error in the formula and correct the recommendation suitably.

11. The original petition along with pending applications is disposed of in above terms.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson