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

**Appeal No. 143 of 2017  
&  
Appeal No. 17 of 2018**

**Dated: 15<sup>th</sup> December, 2023**

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**Appeal No. 143 of 2017**

**In the matter of:**

Jindal Power Limited  
Tamnar, District Raigarh,  
Chhattisgarh – 496107.

...Appellant(s)

Vs.

1. Central Electricity Regulatory Commission  
3rd & 4th Floor, Chanderlok Building,  
36, Janpath, New Delhi - 110001  
Through its Bench Officer.
2. Power Grid Corporation of India Limited,  
Bhadravati HVDC, Sumthana Village,  
Bhadravathi Tehsil, Chandrapur District,  
Maharashtra 442902,  
Through its Manager.
3. Power Grid Corporation of India Limited  
Vindhyachal HVDC, PO Vindhyanagar,  
Post Box No. 12, Singrauli District,  
Madhya Pradesh 486885,  
Through its Manager.
4. Power Grid Corporation of India Limited,  
Western Region-1 Headquarters,  
PO: Uppalwadi, Sampritinagar,  
Nagpur 400026,

Through its Manager.

5. Jindal Power Limited (Generation)  
OP Jindal STPP PO: Tamnar,  
Gharghoda Tehsil, District Raigarh,  
Chhattisgarh 496107  
through its Manager.
6. Lanco Power Limited  
Plot No. 397, Phase-III, Udyog Vihar,  
Gurgaon Haryana 122016  
through its Manager.
7. ACB (India) Ltd  
CHAKABURA, Korba,  
Chhattisgarh 495445  
through its Manager.
8. Chhattisgarh State Power Distribution  
Company Ltd. P.O. Sundernagar,  
Dangania Raipur 492013  
through its Manager.
9. GUVNL  
Sardar Patel Vidyut Bhavan,  
Race Course Vadodara 390007,  
through its Manager.
10. MSEDCL  
Prakashgad, 5th Floor, Bandra East,  
Mumbai 400051.
11. MPPTCL (MP Power Trading Company Ltd)  
Shakti Bhavan, Vidyut Nagar,  
Rampur Jabalpur 482008,  
through its Manager.
12. Goa Electricity Department  
Government of Goa, 3rd Floor,  
Vidyut Bhavan, Panjim 403001,  
through its Manager.

13. Electricity Department  
Union Territory of Daman &  
Diu Sachivalaya,  
Moti Daman, Daman 396210  
through its Manager.
14. Electricity Department  
UT of Dadra Nagar and Haveli,  
Secretariat, Electricity Department,  
Amla Road, Silvassa 396230,  
through its Manager.
15. Torrent Power Grid Limited  
Torrent House, Off Ashram Road,  
Ahmedabad, Gujarat 380009  
through its Manager.
16. Western Region Transmission (Maharashtra) Pvt. Ltd,  
12th Floor, Bldg No 10-B,  
DLF Cyber City, Gurgaon  
Haryana 122002  
through its Manager.
17. Western Region Transmission (Gujarat) Pvt. Ltd.  
12<sup>th</sup> Floor, Bldg No. 10-B, DLF Cyber City,  
Gurgaon, Haryana – 122002,  
Through its Manager.
18. BALCO (Bharat Aluminium Co. Ltd.)  
General Manager (Finance)  
Captive Power Plant – II, BALCO Nagar,  
Korba, Chhattisgarh 495684,  
Through its Manager.
19. JSPL DCP  
Kharsia Road, Raigarh,  
Chhattisgarh – 496001,  
Through its Manager.
20. ESSAR Power MP Limited

- Thana Road, New Chunkumar Stadium,  
Waidhan, Dist. – Singrauli,  
Madhya Pradesh – 486886,  
Through its Manager.
21. ESSAR Power Transmission Company Ltd.,  
Senior Manager,  
A-5, Sector – 3, Gautam,  
Buddha Nagar, Noida,  
Uttar Pradesh – 201301.
22. KSK Mahanadi Power Company Ltd.,  
8-2-293/82/431/A/431/A Road No. 22,  
Jubilee Hills, Hyderabad – 500033,  
Through its Manager.
23. EMCO, Project Head Plot No. B-1,  
Mohabala MIDC Growth Centre,  
Post Tehsil-Warora, Dist – Chandrapur,  
Maharashtra – 442907,  
Through its Manager.
24. Vandana Vidyut Company Ltd.  
Director, Vandana Bhavan,  
M.G. Road, Raipur, Chhattisgarh – 492001  
Through its Manager.
25. Korba West Power Co. Ltd.  
Village Chhote Bhandar,  
P.O. Bade Bhandar, Tehsil Pussore,  
Dist. Raigarh – 496100,  
Through its Manager.
26. DB Power,  
Village – Baradarha, Post – Kanwali,  
Dist – Janjgir, Champa,  
Chhattisgarh – 495695,  
Through its Manager.
27. Jaypee Nigrie STPP,  
Jaiprakash Power Ventures Limited,

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Sector – 128, Noida, Uttar Pradesh – 201304.

28. Essar Steel India Pvt. Ltd.  
27<sup>th</sup> KM, Surat Hazira Road,  
Surat, Gujarat – 394270,  
Through its Manager.

29. Adani Power Limited,  
Shikhar, Nr. Adani House,  
Mithakhali Six Roads, Navarangpura,  
Ahmedabad – 380009,  
Through its Manager.

...Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.  
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Mr. Saransh Shaw  
Ms. Srishti Rai  
Mr. Prateek Gupta  
Ms. Arunima Kedia  
Mr. Shreshth Sharma  
Ms. Nandita Bajpai  
Ms. Sinchal Kakrania

Counsel for the Respondent(s) : Mr. Sethu Ramalingam For R-1  
  
Mr. Pallav Mongia  
Mr. Mridul Chakravarty  
Mr. Tushar Srivastava  
Mr. Abhinav Goyal  
Ms. Vaishali Goyal For R-2 to 4  
  
Mr. Samir Malik  
Ms. Nikita Choukse  
Mr. Rahul Sinha  
Mr. Akash Lamba  
Ms. Ekssha Kashyap For R-10  
  
Mr. Aashish Anand Bernard  
Mr. Paramhans Sahani  
Mr. Ravin Dubey

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Mr. G. L. Pandey  
Mr. K. K. Agarwal For R-11

Mr. Nirnay Gupta For R-20

Ms. Shruti Verma for R-21

**Appeal No. 17 of 2018**

**In the matter of:**

Jindal Power Limited  
Tamnar, Gharghoda Tehsil,  
District Raigarh, Chhattisgarh – 496107.

...Appellant(s)

Vs.

1. Central Electricity Regulatory Commission,  
through its Secretary  
3rd & 4th Floor, Chanderlok Building, 36, Janpath,  
New Delhi — 110001
2. Jindal Power Limited (Generation),  
through its Manager (Legal)  
OP Jindal STPP PO: Tamnar,  
Gharghoda Tehsil,  
District Raigarh, Chhattisgarh 496107
3. Lanco Power Limited,  
through its Managing Director  
Plot No. 397, Phase-III,  
Udyog Vihar, Gurgaon, Haryana 122016
4. ACB (India) Ltd,  
through its Managing Director  
CHAKABURA, Korba,  
Chhattisgarh - 492013,
5. Chhattisgarh State Power Distribution Company Ltd.  
Through its Director (Commercial & Regulatory Affairs)  
P.O. Sundernagar, Dangania, Raipur 492013,

6. Gujrat Urja Vikas Nigam Ltd.,  
Through its Company Secretary  
Sardar Patel Vidyut Bhavan,  
Race Course Vadodara – 390007.
7. Maharashtra State Electricity Distribution Company Limited  
Through its Executive Director (Commercial),  
Hongkong Bank Building,  
MG Road, Fort, Mumbai 400051,
8. MP Power Trading Company Limited  
Through its Chief General Manager (Regulatory)  
Shakti Bhavan, Vidyut Nagar,  
Rampur, Jabalpur -482008
9. Goa Electricity Department  
Through its Chief Legal Officer/  
Executive Engineer (Regulatory),  
Government of Goa, 3rd Floor,  
Vidyut Bhavan, Panjim -403001,
10. Electricity Department,  
Through Secretary (Power)  
Union Territory of Daman & Diu Sachivalaya,  
Moti Daman, Daman 396210
11. Dadra Nagar and Haveli Power Distribution Corporation Limited  
(Electricity Department UT of Dadra Nagar and Haveli),  
Through its Chief Engineer,  
Vidyut Bhavan, Near Secretariat,  
Amla Road, Silvassa -396230
12. Power Grid Corporation of India Limited,  
Through its Chief Legal Officer  
Bhadravati HVDC, Sumthana Village,  
Bhadravathi Tehsil, Chandrapur District,  
Maharashtra 442902,  
Also at:  
Saudamini, Plot No. 2, Sector 29  
Gurgaon -122001.

13. Power Grid Corporation of India Limited,  
Through its Chief Legal Officer  
Vindhyachal HVDC, P0 Vindhyanagar,  
Post Box No. 12, Singrauli District  
Madhya Pradesh -486885.
14. Power Grid Corporation of India Limited  
Through its Chief Legal Officer  
Western Region-1 Headquarters,  
PO: Uppalwadi, Sampritinagar, Nagpur 400026,
15. Torrent Power Grid Limited  
Through its Managing Director  
Torrent House, Off Ashram Road,  
Ahmedabad, Gujarat 380009.
16. Western Region Transmission (Maharashtra) Pvt Limited ,  
Through its Manager (Legal)/ Chief Legal Officer,  
H Block, 1<sup>st</sup> Floor,  
Dhirubhai Ambani Knowledge City,  
Navi Mumbai — 400709.
17. Western Region Transmission (Gujarat) Pvt. Limited  
Through its Manager (Legal)/ Chief Legal Officer,  
H Block, 1<sup>st</sup> Floor,  
Dhirubhai Ambani Knowledge City,  
Navi Mumbai — 400709.
18. BALCO, through its General Manager (Finance)  
Captive Power Plant -II,  
BALCO Nagar, Korba, Chhattisgarh 495684,
19. Jindal Steel Power Limited DCP  
Through its Mr. Rajesh Kumar Aggarwal,  
Vice President  
Kharsia Road, Raigarh,  
Chhattisgarh-496001.
20. ESSAR Power MP Limited



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- Through its Managing Director /Manager (Legal),  
Thana Road, New Chunkumari Stadium  
Waidhan, Dist.- Singrauli,  
Madhya Pradesh-486886,
21. ESSAR Power Transmission Company Ltd,  
Through its Managing Director /Manager (Legal)  
A-5, Sector-3 Gautam Buddha Nagar,  
Noida, Uttar Pradesh-201301,
22. KSK Mahanadi Power Company Ltd,  
Through its Managing Director/ Manager (Legal)  
8-2-293/82/A/431/A Road No. 22,  
Jubilee Hills, Hyderabad-500033
23. EMCO, through its Managing Director/Project Head  
Plot No B-1  
Mohabala MIDC Growth Centre,  
Post Tehsil-Warora, Dist-Chandrapur-442907,  
Maharashtra.
24. Vandana Vidyut Company Ltd,  
Through its Managing Director/Manager (Legal)  
Vandana Bhavan  
M. G. Road, Raipur,  
Chhattisgarh - 492001,
25. Korba West Power Co. Ltd  
Through its Managing Director /Manager (Legal)  
Village Chhote Bhandar,  
P.Q. Bade Bhandar, Tehsil. Pussore,  
Dist.Raigarh-496 100, Chhattisgarh,
26. DB Power,  
through its Managing Director /Manager (Legal),  
Village-Baradarha,  
Post - Kanwali, Dist - Janjgir,  
Champa, Chhattisgarh — 495695,
27. Jaypee Nigrie STPP,  
Through its Managing Director/ Manager (Legal)

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Jaiprakash Power Ventures Limited,  
Sector-128, Noida, Uttar Pradesh — 201304,

28. Essar Steel India Pvt. Ltd,  
Through its Managing Director/ Manager (Legal)  
27<sup>th</sup> KM, Surat Hazira Road, Surat,  
Gujarat - 394270

29. Adani Power Limited,  
Through its Managing Director / Manager (Legal)  
Shikhar, Nr. Adani House,  
Mithakhali Six Roads, Navarangpura,  
Ahmedabad — 380 009.

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.  
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Mr. Saransh Shaw  
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Ms. Srishti Rai

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Mr. K. K. Aggarwal For R-8

Mr. Pallav Mongia  
Mr. Mridul Chakravarty  
Ms. Vaishali Goyal  
Mr. Tushar Srivastava  
Mr. Abhinav Goyal For R-12 & 14

Mr. Alok Shankar for R-20 & 21

## **JUDGEMENT**

### **PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. These Appeals have been filed by Jindal Power Limited (in short "Appellant" or "JPL") against the order dated 18.12.2015 (in short "135-Impugned Order") passed by the Central Electricity Regulatory Commission (in short "CERC" or "Central Commission") in Petition No. 135/TT/2012 for determination of tariff chargeable by the Appellant in FY 2011-12, FY 2012-13 and FY 2013-14, read with the order dated 08.02.2017 ("Impugned Review Order") in Review Petition No. 6/RP/2016 in Petition No. 135/TT/2012 and the Order dated 15.12.2017 ("313-Impugned Order") passed by the Central Commission in Petition No. 313/TT/2014 for truing up of the transmission tariff chargeable by the Appellant in FY 2011-12, FY 2012-13 and FY 2013-14 and determination of tariff for the 2014-19 tariff period under the CERC (Terms & Conditions of Tariff) Regulations, 2009 ("2009 Tariff Regulations") and the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2014 ("2014 Tariff Regulations").

2. The Appellant, a subsidiary of Jindal Steel & Power Ltd. (JSPL), in the two captioned appeals is a Transmission Licensee inter-alia granted transmission licence by the Central Electricity Regulatory Commission (in short "CERC" or "Central Commission"), the Respondent No. 1 in the two captioned appeals having the powers vested under the Electricity Act, 2003 (in short "Act").

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3. The Respondent No. 1, the Central Commission, is a statutory body constituted under section 76 of the Act and is vested with the powers to adjudicate disputes between a Inter State Generating Station (in short "ISGS") and the licensees in accordance with section 79 of the Act, thus is the Appropriate Commission under the provisions of the Act.

4. Respondent No. 2 to 29 are the generating companies or the licensees under the provisions of the Act.

5. On 16.05.2012, the Appellant filed Petition No. 135/TT/2012 for approval of Annual Fixed Cost (in short "AFC") for FY 2011-12 (for the period from 09.5.2011 till 31.03.2012), FY 2012-13 and FY 2013-14, having been granted Inter State Transmission Licence vide CERC order dated 09.05.2011 for transmission system connecting Tamnar sub-station (located in the district Raigarh) to the substation of Power Grid Corporation of India Limited ("POWERGRID") located at Kumhari, Raipur.

6. The Central Commission vide its order dated 26.09.2012 allowed the Appellant to charge provisional tariff for the aforesaid period, subsequently, the Central Commission had called for certain information vide letters dated 03.04.2014 and 21.04.2014 required for the determination of the AFC, which the Appellant had furnished vide its letter no. JPL/CERC/2014-15/2 dated 19.05.2014.

7. The Central Commission vide the 135-Impugned Order dated 18.12.2015 passed the final tariff order with respect to approval of the AFC and transmission tariff, wherein the Central Commission has held as below:

(a) that the Appellant had not allocated any equity to the transmission business of the Appellant (i.e. the Project) and, therefore, till such allocation is made, the equity reflected in the accounts submitted by the Appellant for the combined generation and transmission business of the Appellant cannot be considered for computing return on equity;

(b) since the loan taken for the transmission assets (i.e. the Project) had been repaid prior to the grant of the Transmission Licence to the Appellant, there is no outstanding loan as on date of the Transmission Licence entitling the Appellant to claim cost of servicing such loan.

8. The Appellant argued that the aforesaid decision of the Central Commission is erroneous in respect of consideration of equity, return on equity, debt (including normative debt) and interest on loans as provided in the applicable 2009 Tariff Regulations, accordingly, on 29.01.2016, a review petition was filed being Review Petition No. 6/RP/2016 in Petition No. 135/TT/2012 seeking a review of the 135-Impugned Order, which was admitted by order dated 26.07.2016, thereafter, vide order 04.10.2016 directed the Appellant to furnish the following information on affidavit by 11.11.2016:

(a) the separated audited accounts in prior format of accounts prescribed under Companies Act, 1956, as well as Companies Act, 2013 for the transmission business, generation business along with combined business for the licence issue date i.e. 09.05.2011 and for the period when the transmission

business started with generation business i.e. for the years 2008-09, 2009-10 and 2010-11;

(b) separate audited accounts for transmission business for the period ending 31.03.2012, 31.03.2013 and 31.03.2014.

9. The Appellant, on 11.11.2016, submitted the information including the separated accounts for the transmission business for FY 2008-09 until FY 2010-11 and separated accounts for the transmission business for the periods ending 31.03.2012, 31.03.2013 and 31.03.2014, both duly certified by the auditors of the Appellant.

10. Thereafter, the Central Commission vide another letter dated 09.12.2016, further, directed the Appellant to furnish separated audited accounts for the transmission business and generation business along with accounts for the combined business as on the date of grant of the Transmission Licence, which was furnished by the Appellant, on 02.01.2017, in the form of the Balance Sheet reflecting both, the segregated accounts of the transmission and generation businesses as well as accounts of the combined business as on 09.05.2011.

11. The Appellant submitted that the Balance Sheet indicated the apportioned shareholders' fund amongst the generating business and the transmission business based on their respective gross fixed assets and the financing plan, according to which, the value of the gross fixed assets of the transmission system worked out to Rs. 316.56 crore, it is the claim of the Appellant that the same has been apportioned in the debt-equity ratio of 80:20 based on the financial plan as on the Commercial Operation Date (in short "COD") of the Project.

12. It was, further, submitted by the Appellant that Balance Sheet also reflects that the repayment of the loan availed for the Project was made from **Reserves and Surplus** i.e. by substitution of equity from the shareholders' fund in place of the loan borrowed from the lenders between the period from actual COD of the Project i.e. 16.04.2008 until the date of the grant of Transmission Licence i.e. 09.05.2011, further, the accounts also reflected that the Appellant has incurred an expense of Rs. 5.31 crore towards fixed assets for transmission business after date of commissioning of the Project till date of grant of the Transmission Licence.

13. The Appellant submitted that the Central Commission after examining the information furnished, passed the impugned Review Order dated 08.02.2017 *inter-alia* deciding that:

- a) disallowance of return on equity as part of the transmission charges in the Impugned Order is not an error apparent on the face of the record since the Appellant had not submitted separate accounts for its transmission business to the Central Commission in its original petition (i.e. Petition No. 135/TT/2012), the Central Commission also noted that the Impugned Order had allowed the Appellant the liberty to submit separate accounts for its transmission business at the time of determining its Truing-up Petition for the transmission charges for the financial years in question;
- b) the accounts furnished by the Appellant vide its affidavits dated 11.11.2016. and 02.01.2017 did not allocate balances under heads such as investments, current assets, non-current

liability and current liability between the generation and transmission businesses, the Central Commission has directed the Appellant to submit the audited balance sheet of the transmission and generation business along with the director's report and auditor's comments from the actual commercial operations date until the date of grant of licence at the time of determination of the Truing-up Petition filed by the Appellant in order to claim return on equity for the period of FY 2011-12 to FY 2013-14 as part of its transmission charges for this period;

c) since the entire loan availed for the Project was repaid and none was outstanding on the date of issuance of the Transmission Licence, servicing of the loan after repayment would amount to additional servicing of loan and accordingly interest on loan was disallowed as a component of the transmission charges of the Appellant for FY 2011-12 to FY 2013-14, the Central Commission has held that the Appellant had not submitted any fresh reason or justification to review the Impugned Order.

14. The present Appeal has been filed with respect to the same transmission system of the Appellant as considered in the first captioned appeal.

15. The Appellant submitted that the details of the investments made by the Appellant towards setting up the transmission system were available with the Central Commission as the information relating thereto was submitted to the Central Commission on various occasions, the following documents clearly



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indicate the investment made towards creation of the transmission system, in question: -

- (a) estimated Capital costs, which were projected while preparation of the Feasibility Report and the Detailed Project Report;
- (b) fixed assets towards Appellant's licensed transmission business as indicated in the Auditor's Certificate dated 13.07.2012;
- (c) additional capital expenditure alongwith justification for the assets as submitted by the Appellant vide its letter dated 19.05.2014;

16. The Appellant, on 12.09.2014, filed the petition being Petition No. 313/TT/2014 seeking approval of annual fixed cost (truing up) and determination of tariff for the licensed transmission business for the FYs 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 and truing up for the FYs 2011-12, FYs 2012-13 and FYs 2013-14 in accordance with the 2014 Tariff Regulations.

17. Pursuant to it, MSEDCL i.e. Respondent No.7 and MP Power Management Company Ltd. i.e. Respondent No.8 filed their replies in the said Petition before the Central Commission, subsequently, the Central Commission passed vide Order dated 20.09.2016 directed the Appellant to submit the following information on affidavit:

- (a) Revised Auditor's certificate for the said assets as on effective date of tariff fixation if there is any change in capital cost;
- (b) Revised tariff forms for 2009-14 tariff period for truing-up considering all aspects covered in Order dated 18.12.2015 for Petition No.135/TT/2012 as the present petition was filed prior to the issue of final tariff order in Petition No. 135/TT/2012;
- (c) Revised tariff forms for the period of 2014-19;
- (d) Details of infusion of loan and equity for transmission business if any;
- (e) Documentary proof in support of each interest rate rest during the period of 2009-14, if any;
- (f) Details of un-discharged liabilities discharged during the tariff period of 2009-14 duly certified by the Auditor if any;  
and
- (g) Details of actual expenditure incurred towards procurement of initial spares during the period of 2009-14 duly certified by the Auditor if any.

18. Subsequently, the Appellant filed the first captioned appeal challenging the Impugned Review Order dated 08.02.2017 passed by the Central Commission *inter-alia* seeking relief with respect to the issue of "Interest on loan" as the Central Commission had categorically observed that 'return on equity' shall be considered at the time of truing up, the prayers made in Appeal No. 143 of 2017 are as follows: -

- (a) that as per Regulation 16(2) of the 2009 Tariff Regulations, the repayment of a normative loan for the period 2009-14 is to be considered limited to depreciation allowed for the year and consequently, the remaining amount of debt should normative loan availed by the Appellant;
- (b) that the Appellant is entitled to deploy the fund for the project cost including the free reserves and retained earnings and swap the actual loan taken from lenders. The Appellant in the instant case was entitled to service the Project cost from shareholder contributions which in essence amounts to equity.

19. Separately, complying with the directions issued vide order dated 20.09.2016, following documents were filed by the Appellant:

- (a) Audited financial statements for FY 2014-15 and FY 2015-16.
- (b) Financial statements certified by Auditor for FY 2008-09 to FY 2013-14 and as on date of grant of licence i.e. 09.05.2011.
- (c) Supporting documents for SBI PLR, in order to bring on record the applicable rate of interest for the computation of interest on working capital.
- (d) Director's Report for FY 2011-12 which also contains statement on transmission and generation activities.
- (e) Details of transmission billing from 09.05.2011 to 30.06.2011.
- (f) Revised Auditor's certificates for the assets as on 31.03.2016 pursuant to additional capitalization.

- (g) Revised Tariff forms for 2009-14 period for truing up considering all aspects covered in Order dated 18.12.2015 in Petition No.135/TT/2012.
- (h) Revised Tariff forms for 2014-19.
- (i) Details of infusion of loan and equity for transmission business.
- (j) Along with the aforesaid it was stated that there was no change in interest rate during 2009-14 period. The Appellant also did not have any undischarged liabilities and actual expenditure incurred towards procurement of initial spares during 2009-14 tariff period which were duly certified by the Auditor

20. The Appellant also claimed that the transmission assets considered by the Central Commission for tariff determination for FYs 2011-12 to FYs 2013-14 did not included the Cost of 2 x 400 kV bays at Raipur, bus sectionalizer bays and part of 400/220 kV sub-station equipment, which were put to use for undertaking the transmission activities as the same were not included in the scope of Transmission Licence inadvertently and accordingly, the Appellant reserved its right to seek amendment of the transmission licence to include the above assets.

21. Consequently, the Appellant filed Petition No. 262 MP of 2017 before the Central Commission seeking amendment to the transmission licence granted to the Appellant vide order dated dated 09.05.2011 for including the 2 x 400kV bays and bus sectionalizer bays and part of 400/220 kV sub-station equipment being material components of the transmission system, with the submission that the 2 x 400kV bays and bus sectionalizer bays were always a

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part of the planning and functioning of the said system at Raipur Sub-station of POWERGRID.

22. The Appellant vide affidavit dated 29.04.2017 included its claim regarding the rate of interest on working capital being 12.25% for the control period 2009-14, which was the prevailing SBI PLR as on 01.04.2009 in accordance to Regulation 18 (3) of 2009 Tariff Regulations, as against the grant of the rate of interest on working capital as 11.75% (Base rate on 01.04.2011 i.e. 8.25% plus 350 basis points) by the Central Commission vide Order dated 18.12.2015 in Petition No. 135/TT/2012, further it is the claim of the Appellant that the applicable rate, for the control period 2014-19, is 14.75% (SBI PLR as on 01.04.2014) in terms of Regulation 28(3) of the 2014 Tariff Regulations as against the rate of interest on working capital granted by the Central Commission as 13.5%.

23. Further, on 08.07.2017, the Appellant filed an affidavit before the Central Commission to bring on record the actual additional capitalization incurred for the period of 2014-19 and an appropriate modification of the affidavit dated 29.04.2017, wherein the Appellant had advertently placed Rs.6.40 lakhs as additional capitalization instead of Rs.6.40 Crore for FY 2015-16.

24. On 11.07.2017, the Central Commission directed the Appellant to submit the following additional information by way of an affidavit:

- (a) Director's Report and Auditor's comments on the bifurcated financial accounts for the period as on actual date of commercial operation 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 including the date of license;

- (b) Details of financial year when the outstanding amount of Rs. 6.6 Crore which was accounted as receivable as part of current assets by reconciling with financial statements as it was submitted by the Appellant that transmission billing for the period 9.5.2011 to 30.6.2011 amounting to Rs. 6.6 Crore was outstanding which forms a part of current asset under trade receivables component of the balance sheet; and
- (c) Details for additional O&M Expenses claimed for 2009-14 period.

25. In compliance to the directions dated 11.07.2017, the Appellant filed an affidavit before the Central Commission on 11.08.2017 in order to bring on record the following:

- (a) Copy of the Auditor's Report and audited financial statement for FYs 2008-09 to FYs 2015-16.
- (b) Copy of Director's Report for FYs 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16.
- (c) Copy of financial statements certified by the Auditor for segregated accounts in the format as provided in the Companies Act, 1956 for transmission business, generation business along with combined business for FY 2008-09 to FY 2013-14. These financial statements were also part of the affidavit dated 11.11.2016 filed in Petition No.06/RP/2016 along with segregated accounts for FY 2014-15 and FY 2015-16 which were already submitted vide affidavit dated 29.04.2017 in Petition No.313/TT/2014.
- (d) With regard to the outstanding amounts of Rs.6.60 Crore for the period 09.05.2011 to 30.06.2011, it was submitted that the

Appellant had raised those bills for the intermittent period for the beneficiaries and it formed part of Current Assets under trade receivable components of balance sheets from FY 2012-13 onwards. Accordingly, the Appellant requested the Central Commission to direct the beneficiaries to make payment amounting to Rs.6.60 Crore along with carrying costs to the Appellant.

(e) The actual operation and management expenses incurred during the period FY 2008-09 to FY 2013-14 were factored in the financial statements certified by the Auditor for FY 2008-09 onwards and accordingly the Appellant requested the Central Commission to approve the truing up of operation and management expenses for the period FY 2011-12, FY 2012-13 and FY 2013-14 based on the actual expenses summarized as under:

Particulars	FY 2011-12 (09.05.2011 to 31.03.2012)		FY 2012-13		FY 2013-14	
	Normative	Actual	Normative	Actual	Normative	Actual
O&M expenses	550.50	683.5	647.60	858.83	684.5	711.56

26. Thereafter, an additional affidavit was filed on 31.08.2017 in continuation to the affidavit filed in compliance with the directions dated 11.07.2017 bringing on record the audited financial statement for segregated accounts as on the date of grant of licence i.e. 09.05.2011.

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27. The Appellant argued that despite the submissions made including the aforesaid facts and financial details including various statements in an exhaustive manner, as sought by the Central Commission, the Impugned Order was passed 15.12.2017 causing grave prejudice due to the following reasons:

- (a) 'return on equity' on Tariff for FYs 2011-14 and 2014-19 has not been allowed, even though huge investments were made by the Appellant;
- (b) Interest on loan has not been granted for FYs 2011-14 and 2014-19, even on normative basis as on the date of grant of Transmission Licence, the Appellant had repaid its entire loan amount;
- (c) Debt-Equity ratio for FYs 2011-14 and 2014-19 has been ascertained as 0:0 as there was neither any equity nor any debt existing.

28. It is the argument of the Appellant that the 2014 Tariff Regulations are applicable for the Control Period of FY 2014-19 and Regulation 19 provides that the Debt-Equity ratio for the Control period of 2014-19 for the transmission system commissioned prior to 01.04.2014 shall be governed on the basis of Debt-Equity ratio allowed by the Central Commission for determination of tariff for the period ending 31.03.2014. Relevant portion of Regulation 19 of 2014 Tariff Regulations is set out as under:

**“19. Debt-Equity Ratio:** (1) For a project declared under commercial operation on or after 1.4.2014, the debt-equity ratio would be considered as 70:30 as on COD. If the equity actually



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*deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:*

*Provided that:*

- i. where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff:*
- ii. the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment:*
- iii. any grant obtained for the execution of the project shall not be considered as a part of capital structure for the purpose of debt : equity ratio.*

***Explanation.-*** (1) *The premium, if any, raised by the generating company or the transmission licensee, as the case may be, while issuing share capital and investment of internal resources created out of its free reserve, for the funding of the project, shall be reckoned as paid up capital for the purpose of computing return on equity, only if such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station or the transmission system.*

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*(3) In case of the generating station and the transmission system including communication system declared under commercial operation prior to 1.4.2014, debt-equity ratio allowed by the*

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*Commission for determination of tariff for the period ending 31.3.2014 shall be considered.”*

29. The Appellant submitted that the Central commission, however, has not only trued up the tariff for FY 2009-14 but has also determined the tariff for FY 2014-19, thus, the erroneous findings of the Central Commission with respect to the Debt-Equity components in truing up the tariff for the period of 2009-14, has a cascading effect on such components for tariff determination for the period of 2014-19, therefore, the hardships caused to the Appellant on account of erroneous findings with respect to Debt-Equity components of the Central Commission is not limited to only the control period of 2009-14 but also to the 2014-19 in terms of Regulation 19 of the 2014 Tariff Regulations.

30. Hence, the present appeal.

31. The issue, thus, before us is the disallowance of Return on Equity and Interest on Loan to Appellant in contravention of the CERC Tariff Regulations as well as judgments passed by this Tribunal.

32. The Central Commission defending its order submitted that Impugned order dated 18.12.2015 in Petition No. 135/TT/2012, in para 36, has taken note of the fact that *“The petitioner has submitted that the entire actual loan for integrated project has been repaid prior to inception of the licensed transmission business.”* Further, the Respondent Commission has also relied upon the contents of the Auditor’s certificate dated 13.09.2012 submitted by the petitioner vide affidavit dated 14.9.2012 for the actual repayment of the loans. Based on the above, the Respondent Commission recorded that the *“outstanding debt as on effective date has been worked out by taking into*

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account the actual repayment of loan and outstanding loan” and found the same to be NIL – as stated in para 37 of the impugned order. It is also significant that similar principle was adopted in Petition No. 60/2001 while allowing tariff for Chamera HE Project Stage I.

33. Consequently, the Respondent Commission arrived at the following conclusion:

*“38. As the transmission assets of the petitioner were not regulated by the Commission prior to issue of the license, the debt is to be considered with reference to the actual repayment. However, the petitioner has claimed the cost of debt on normative loan considering the repayment equal to depreciation but the issue of the cost of debt does not exist as the repayment has already been made and net outstanding loan is NIL as on the date of licence. The consideration of the cost of debt even after the repayment of the loan would lead to additional servicing of the investment. Thus, no interest on loan is allowed in the instant petition.”*

34. The Central Commission, further, argued that the Review Petition No. 6/RP/2016 in Petition No. 135/TT/2012 was dismissed holding as under:

*“17. The review petitioner has contended that term “debt” includes not only the actual loan taken but also the normative loan. We are of the view that the entire loan was repaid in the instant case and no loan was outstanding on the date of issue of licence. Servicing of loan even after repayment would amount to additional servicing of loan. Accordingly, IOL was disallowed. Further, the petitioner has*

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*not submitted any fresh reason or justification to review our decision in order dated 18.12.2015. We do not find any reason for reviewing our earlier decision and accordingly review on this account is not allowed.”*

35. Further, the same reasoning was reiterated in the order dated 15.12.2017 while Truing up tariff in Petition No. 313/TT/2014 as under:

*“25. No interest on loan is allowed as the entire secured loan amounting to `25749.58 lakh was repaid by the petitioner during financial year 2010-11 as per the segregated balance sheet for transmission business.”*

36. Our attention was invited to clause 16 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, as under:

*“16. (1) The loans arrived at in the manner indicated in regulation 12 shall be considered as gross normative loan for calculation of interest on loan.*

*(2) The normative loan outstanding as on 1.4.2009 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2009 from the gross normative loan.*

*(3) The repayment for the year of the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that year:*

*(4) Notwithstanding any moratorium period availed by the generating company or the transmission licensee, as the case may be the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed,*

*(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the project:*

*Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:*

*Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.*

*(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.*

*(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and*

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*the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.*

*(8) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.*

*(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute:*

*Provided that the beneficiary or the transmission customers shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of refinancing of loan*

37. It may be seen from the above, that the Respondent Commission had acted in accordance with the provisions of the tariff regulations which are binding on it.

38. In this connection, reliance was placed on the Judgment dated 15.03.2010 of the Supreme Court in Civil Appeal No. 3902 of 2006 titled *PTC India Ltd Vs. the Central Electricity Regulatory Commission JT 2010 (3) SC 1, 2010 (4) SCC 603* wherein it has been categorically held that order passed by the Commission under Section 79(1) of the Electricity Act, 2003, has to be in conformity with the Regulations made under Section 178. Relevant portion of

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the above judgment of the Apex court is extracted hereunder for ease of reference:

*“40. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc.. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle*

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*flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An Order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject matter of challenge before the Appellate Authority under Section 111 as the levy is imposed by an Order/decision making process. Making of a regulation under Section 178 is not a pre-condition to passing of an Order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the Order levying fees under Section 79(1)(g) has to be in consonance with such regulation. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulation under Section 178. One must keep in mind the dichotomy between the power to make a regulation under Section 178 on one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that .....*”



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39. It is also noteworthy that all the three judgments of the Hon'ble Tribunal relied upon by the Appellant pertain to the period prior to the above extracted ruling of the Apex Court in its judgement dated 15 March 2010 as listed below:

- (a) *Judgment dated 27 Aug 2007 in Appeal No. 13 of 2007*
- (b) *Judgment dated 10 Dec 2008 in Appeal No. 151 & 152 of 2007*
- (c) *Judgment dated 16 Mar 2009 in Appeal No. 133/08, 135/2008 & 136/2007 & 148/08*

40. The Respondent No. 8, MPPMCL submitted that the Central Commission in its order dated 15.12.2017 in Petition No. 313/TT/2014 has disallowed the claim of the Appellant on ground of equity reflected in accounts cannot be considered for computing return on equity, argued that the order dated 15.12.2017 is a well-reasoned order and no substantial question of law or fact arises in the instant Appeal and the instant appeal ought to be dismissed, the Appellant itself has made the submission that entire actual loan for integrated project has been repaid prior to inception of licensed transmission business and since prepayment has already been made making outstanding loan on the date of license as NIL., the issue of cost do not exist, accordingly, the Central Commission has very clearly held that the question of grant of Return on Equity and Interest on Loan would only arise if as per the applicable Tariff Regulations there is any equity or loan outstanding and the specific finding given by the Central Commission in paras 19-23 of the impugned order is that there is no loan outstanding and also that as per the Tariff Regulations there is no equity infused so as to claim RoE.

41. Further, submitted that the Central Commission had also made the above-mentioned observations in order dated 18.12.2015 in petition no.

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135/TT/2012 and order dated 08.02.2017 in R.P. No. 06/RP/2016 and the said findings of the Central Commission with respect to the Return on Equity were not challenged by the Appellant, therefore, the order dated 18.12.2015 is final as in that order the Central Commission had considered the Debt:Equity ratio of 100:0 and therefore the Central Commission had clearly held in the said order dated 18.12.2015 that the Appellant has not infused any equity and therefore there was no question of granting any such Return on Equity, these findings in order dated 18.12.2015 have been accepted by the Appellant and not been challenged and therefore the Appellant cannot be permitted to challenge the same through the instant proceedings.

42. The Transmission Project was commissioned on 16.08.2008, however, the Transmission Licence was only on 09.05.2011, thereafter, on 16.05.2012, Appellant filed Petition No. 135/TT/2012 for the approval of Annual Fixed Cost for FY 2011-12 (for the period from 09.05.2011 till 31.03.2012), FY 2012-13 and FY 2013-14 inter-alia claiming tariff on the basis of gross fixed asset (in short "GFA") of Rs. 321.87 Crore, while, the actual debt-equity ratio maintained by Appellant for financing the Transmission Project was 80:20 as on actual Commercial Operation Date, i.e., 16.08.2008, in terms of Regulation 12 of the 2014 Tariff Regulations, the Appellant had claimed tariff based on debt-equity ratio of 70:30 before us and also filed Petition No. 313/TT/2014 seeking approval of annual fixed cost (truing up) and determination of tariff for the licensed transmission business for the FYs 2014-15 to 2018-19 and truing up for the FYs 2011-12 to 2013-14 on the similar grounds.

43. However, CERC vide the aforesaid Impugned Orders disallowed the claims pertaining to debt-equity ratio observing:

- a. Order dated 18.12.2015 in Petition No.135/TT/2012 - that on the balance sheet of licenced transmission business of JPL, indicates NIL share capital of licenced transmission business, however, granted liberty to JPL to submit the segregated accounts at the time of truing-up.
- b. Order dated 08.02.2017 in Review Petition No. 06/RP/2016 - that in the segregated balance sheets submitted during the pendency of review proceedings, vide affidavits dated 11.11.2016 and 02.01.2017, JPL allocated the balance under the head equity, reserves & surplus (from liability side), GFA, Depreciation and Net Block (from assets side) between generation and transmission business, but did not allocate balances under heads such as investments, current assets, non-current liability and current liability between the generation and transmission businesses. Hence, JPL was directed to submit audited generation and transmission balance sheets along with Director's Report and Auditor's comments
- c. Order dated 15.12.2017 in Petition No.313/TT/2012 - that the segregated balance sheet for FY 2009-10 submitted by JPL does not reflect any Inter Division Balance. However, amounts of Rs. 6436.89 Lakhs as equity and Rs. 25749.58 Lakhs are reflected as secured loan. CERC further observed that in the Directors and Annual reports, there is no segregation of accounts between the generation and transmission business of JPL. Therefore, JPL is not entitled to Return on equity, as on COD there was neither any investment nor any outstanding loan deployed.

44. Further, in respect to interest on loan, has observed as under:

- a. Order dated 18.12.2015 in Petition No.135/TT/2012 – that JPL had claimed the cost of debt on normative loan considering the repayment equal to depreciation, but the issue of the cost of debt does not exist as the repayment has already been made and net outstanding loan is NIL as on the date of licence.
- b. Order dated 08.02.2017 in Review Petition No. 06/RP/2016 - has repeated its findings to hold that JPL is not entitled to any Interest on Loan.
- c. Order dated 15.12.2017 in Petition No.313/TT/2012 - has repeated its findings to hold that JPL is not entitled to any Interest on Loan.

45. As seen from the submissions of the Appellant that it has submitted all required data by its Affidavits dated 29.04.2017, 08.07.2017, 11.08.2017 and 31.08.2017 and also in the aforesaid truing-up proceedings before the Central Commission, however, the Central Commission observed that the segregated balance sheet for FY 2008-09 reflects an Inter Division Balance for FY 2008-09 while the Balance Sheet for FY 2009-10 submitted by Appellant does not reflect any Inter Division Balance and amounts of Rs. 6436.89 Lakhs as equity and Rs. 25749.58 Lakhs are reflected as secured loan.

46. Further, the observation that the Director's Report and Annual Reports are silent on the allocation of assets between generation and transmission is not correct, as the Appellant placed before us the copy of the consolidated balance sheet as on 31.03.2009, also the copies of the segregated balance sheets as on 31.03.2009, 31.03.2010, 31.03.2011, 31.03.2012 and 09.05.2011.

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47. It also placed before us the Director's Report and Annual Reports along with all segregated accounts from FY 2008-09 onwards, which were also placed during the truing-up proceedings, the Appellant vide affidavit dated 29.04.2017 filed in the truing-up proceedings submitted that the Director's report contains the statement of all the company's affairs for the entire financial year and is not prepared for an intermittent period

48. However, Appellant submitted that it had submitted the segregated accounts, certified by its auditors, it could have not retrospectively shown segregation of accounts for such period in the Director's Reports and Annual Reports.

49. Certainly, Director's Reports and Annual Reports cannot provide retrospectively the segregation of accounts as also submitted by the Appellant vide affidavit dated 29.04.2017.

50. The Appellant submitted that the auditors, prior to the directions of CERC, had prepared the balance sheets and other financial statements of JPL in terms of then existing Accounting Standards (AS) -10 as well as taking into account the Director's Responsibility Statement in terms of erstwhile Section 217 of the Companies Act, 1956 (now Section 164(5) of the Companies Act, 2013), the AS-10 (Sr. No.10) provides for accounting of Fixed Assets, including self-constructed fixed assets.

51. Further, submitted that at the time of grant of Transmission License to JPL, i.e., on 09.05.2011, CERC (Sharing of revenue derived from utilisation of transmission assets for other business) Regulations, 2007 were also in effect, wherein, Regulation 6 provides that the transmission owner shall maintain

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separate books of accounts for each of the other business, and separately from those of the transmission business and submit copies of the balance sheet, profit and loss account for the period ending 31st March, the auditors reports and notes on accounts to the Commission annually on or before 31st October of the year, however, these regulations do not provide any format for maintenance of the aforesaid accounts, but lays down the following conditions:

*“6. Maintenance of accounts. (1) The transmission owner shall maintain separate books of accounts for each of the other business, and separately from those of the transmission business and submit copies of the balance sheet, profit and loss account for the period ending 31st March, the auditors reports and notes on accounts to the Commission annually on or before 31st October of the year.*

*(2) The books of accounts for the other business shall, inter alia, contain the details of revenue, cost, asset, liability, reserve, provision charged from or to the other business together with the basis for apportionment or allocation of charges between the transmission business and the other business.”*

52. On being asked, it was submitted that none of the aforesaid Standards/Statute/Regulations, i.e., Accounting Standards, the Companies Act, 1956 (Section 210 and 211 read with Schedule VI), Companies Act, 2013 (Section 129 read with Schedule-III), or CERC (Sharing of revenue derived from utilisation of transmission assets for other business) Regulations provide for preparation of segregated balance sheets for generation and transmission assets of JPL.

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53. It cannot be disputed that there is a difference between the Regulatory Accounting and Accounting as per Companies Act, the regulations of CERC even if 100% equity is deployed by the developer, the debt-equity ratio of 70:30 is required to be maintained and any equity infusion above 30% is treated as normative loan, which certainly cannot be considered under the Companies Act.

54. The Appellant, therefore, pursuant to directions of CERC, prepared the segregated statements as per the Guidance Notes and Principles stipulated by the Institute of Chartered Accountants (in short "ICA"), reliance is placed on the Guidance Note on Combined and Carve-out Financial Statements (Sr. No.20-22) and Accounting for Branches (Sr. No.6) which provides for preparation of balance sheets in cases where different branches/departments of a company are required to be shown in a segregated manner.

55. The Appellant pleaded that it is a common practice for companies to show similar inter-divisional balances under different nomenclatures, such as "Inter-unit accounts" where funds of one entity are pooled and distributed amongst different branches/businesses, a balance sheet of NTPC Limited was placed before us which has similar accounting procedure.

56. Since there is no accounting standard prescribed for carved financials within a consolidated business, the auditors of the Appellant used best possible proportion ratio / estimate based on the identified actual transmission assets (assets were identified and after that common facilities have been used for segregation of Balance Sheet items on estimate basis), also, as no specific loans were taken at that point of time by the Appellant, assets were placed jointly and only memoranda records were maintained for this purpose by it.

57. In this regard, the Note No. 3 of Schedule 15 (Part B) of the segregated balance sheets was placed on record by the Appellant which is also relevant wherein the aforesaid position was noted, further, the auditors in the aforesaid segregated balance sheet(s) had also noted that the Accounting Standard 17, which is generally utilised for segment reporting, could not be used since the business of the Appellant company was recognised as a private power producer, where generation and transmission was not being undertaken by it as separate businesses, further, Appellant only had one geographical reportable segment, i.e., operations within India, therefore, the requirements under AS-17 for segment reporting were not satisfied.

58. We are inclined to accept the submission of the Appellant that the Central Commission while passing the Impugned Orders has failed to note that the balance sheets prepared by it for its licenced transmission business could only be prepared prospectively since prior to the grant of transmission licence, it was operating its generation and transmission business in a consolidated manner, however, the balance sheets prior to grant of transmission licence reflected Rs.321.87 Crore as "Inter-Division Balance" since the entire funding of the Project has been done through Appellant own funds and prior to grant of Transmission Licence, Appellant could not have segregated its accounts between generation and transmission.

59. From the balance sheets submitted by the Appellant for periods after the grant of transmission licence, it can be noted that these have duly reflected the actual debt-equity segregation of 80:20 on the basis of which the Project was funded, CERC has failed to note the basic principle of accounting, i.e., there can be no asset creation without liability since the account statements of



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a company are required to always be balanced, while CERC has taken into account the value of GFA and also allowed depreciation on such GFA, it has returned the finding that there was no equity in the transmission business of JPL, there cannot be a situation where certain entries (for the asset in question) are considered on asset side but do not appear on liability side and vice-versa.

60. The Appellant argued that at any point of time, the resources of the business entity must be equal to the claims of those who have financed these resources, the proprietors and outsiders provide the resources of the business, the claim of the proprietors is called capital and that of the outsiders is known as liabilities, also, each element of the equation is the part of balance sheet, which states the financial position of the business on a particular date.

61. It cannot be disputed that the Asset side of the balance sheet is the list of assets, which the business entity owns, the liabilities side of the balance sheet is the list of owner's claims and outsider's claims, i.e., what the business entity owes, thus, the equality of the assets side and the liabilities side of the balance sheet is an undeniable fact and this justifies the name of accounting equation as balance sheet equation also.

62. Also submitted that in terms of Regulation 12(1) of the CERC 2009 Tariff Regulations and Regulation 19 of the 2014 Tariff Regulations, in the event the project is funded with equity above 30% of the capital cost, the excess equity is to be treated as normative loan, further, as per Regulation 16(2) of the 2009 Tariff Regulations and Regulation 26 of the 2014 Tariff Regulations, the repayment of a normative loan for the period 2009-14 is to be considered

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limited to depreciation allowed for the year and consequently, the remaining amount of debt should have been treated as normative loan availed by the Appellant.

63. We agree with the contention of the Appellant that the Appellant is entitled to deploy the fund for the project cost including free reserves and retained earnings and swap the actual loan taken from lenders, also, in the instant case was entitled to service the Project Cost from shareholder contributions which in essence amounts to equity, such deployment of fund necessarily has to be recognized for purpose of tariff inter-alia the asset used in the transmission business has, in the present case, been funded by the shareholders, hence, the normative regulated return on equity should have been allowed in tariff.

64. This Tribunal vide judgment dated 27.08.2007 passed in Appeal No. 13 of 2007 titled *Municipal Corporation of Greater Mumbai vs. MERC*, has held that interest on internal funds should also be given in addition to return on equity on internal funds/reserves which has been treated as notional equity of the utility.

65. Further, this Tribunal vide judgment dated 10.12.2008 passed in Appeal No. 151 – 152 of 2007 titled *NTPC Ltd. vs. CERC* and judgment dated 16.03.2009 passed in Appeal No. 133 of 2008 titled *NTPC Ltd. vs. Central Electricity Regulatory Commission & Ors.* and batch matters, has held that if a utility employs its own funds over and above equity there is no reason why it should not earn interest thereon.

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66. Therefore, in view of the foregoing facts and circumstances, the findings of the Central Commission in the Impugned Orders regarding Return on Equity and Interest on Loan, are set side and the captioned Appeals accordingly allowed.

**ORDER**

The Captioned Appeals Nos. 143 of 2017 and 17 of 2018 filed by JPL, the Appellant have merit and allowed.

The Impugned Orders dated 18.12.2015 in Petition No. 135/TT/2012, dated 08.02.2017 in Review Petition No. 6/RP/2016 in Petition No. 135/TT/2012 and the Order dated 15.12.2017 in Petition No. 313/TT/2014 passed by the Central Commission are set aside limited to the extent of equity, return on equity and interest on loan and in accordance with the observation and conclusion made in the preceding paragraphs.

The claim of the Appellant shall be in accordance to Debt:Equity ratio of 80:20 for return on equity and interest on loan, considering the GFA of the transmission asset.

The captioned Appeals and IAs if any are also disposed of accordingly.

**PRONOUNCED IN THE OPEN COURT ON THIS 15<sup>th</sup> DAY OF DECEMBER, 2023.**

**(Sandesh Kumar Sharma)**  
**Technical Member**

**(Justice Ramesh Ranganathan)**  
**Chairperson**

*pr/mkj*