IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 162 OF 2025 & IA No. 701 OF 2025

Dated: 30th May, 2025

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

Jindal Steel and Power Limited	**....**	**Appellant(s)**
Versus		
Jharkhand State Electricity Regulatory Commission & Ors.	**....**	**Respondent(s)**

Counsel on record for the Appellant(s)	:	Hemant Singh Sourav Roy Mridul Chakravarty Biju Mattam Ankita Bafna Lakshyajit Singh Bagdwal Chetan Kumar Garg Supriya Rastogi Agarwal Nehul Sharma Harshit Singh Lavanya Panwar Alchi Thapliyal Sanjeev Singh Thakur Indrayudh Chowdhury for App. 1
Counsel on record for the Respondent(s)	:	Shri Venkatesh Shryeshth Ramesh Sharma Kanika Chugh Ashutosh Kumar Srivastava Abhishek Nangia Akash Lamba Nihal Bhardwaj Siddharth Nigotia Shivam Kumar Kartikay Trivedi Aashwyn Singh Mohit Gupta Manu Tiwari Harsh Vardhan Aniket Kanhaua Suhael Buttan

Priya Dhankar
Anant Singh
Vineet Kumar
Nikunj Bhatnagar
Kunal Veer Chopra
Vedant Choudhary
Aniket Kanhaua
Tarang Saraogi for Res. 2

ORDER

IA No. 701 OF 2025
(for interim relief)

The present IA has been filed by the Appellant-**M/s Jindal & Steel Power Limited** (**"Jindal Steel**") in Appeal No. 162 of 2025 seeking stay of operation of the Order dated 10.12.2024 passed in Case No. 09 of 2020 ("**first impugned order**") and Order dated 08.04.2025 passed in Case No. 04 of 2025 ("**second impugned order**") by the **Jharkhand State Electricity Regulatory Commission** ("**State Commission/JSERC**").

Mr. Buddy Ranganadhan, learned Senior Counsel appearing on behalf of the Appellant, has submitted that in the first impugned order, which has been passed in compliance with the order dated 15.10.2024 passed by this Tribunal in Appeal No. 332 of 2024, the State Commission has determined the category-wise tariff of consumers for the past period i.e. FY 2006 to FY 2012 and directed the 2nd Respondent-DVC to report the consumer-wise principal amount to be refunded or recovered on the basis of the impugned order; based on which the 2nd Respondent-DVC has raised a demand of Rs.11,71,84,679/- (Rupees eleven crores seventy one lakh eighty four thousand six hundred and seventy nine only) and proceeded to split this demand in 24 equal monthly instalments (EMI) of Rs.48,82,695/- (Rupees forty eight lakhs eighty two thousand six hundred

ninety five only) and has added the same to the monthly energy bills as arrears starting from monthly energy bill of January 2025, while the bills raised for concerned period was paid in full without any arrear. On non-payment of such instalment of past dues which was included in the monthly energy bill of January 2025, the 2nd Respondent-DVC has issued a disconnection notice dated 25.02.2025. The learned Senior counsel has also contended that the State Commission in the Impugned Order has not provided clarity as to the manner of recovery to be made by DVC and the same is in violation of the principle contained in JSERC Tariff Regulations. Learned Senior Counsel contended that this Tribunal has directed for re-determination of the Annual Revenue Requirement as well as category-wise tariff of consumers for the past period to enable the 2nd Respondent-DVC to compute the revenue gap or revenue surplus for FY 2006 to FY 2012 and the same was to be factored in the subsequent years ARR in terms of JSERC (Terms and Conditions for Determination of Distribution of Tariff) Regulations 2020 (**"JSERC Tariff Regulations"**).

Learned Senior Counsel further submitted that the State Commission while issuing the directions in the first impugned order has referred to this Tribunal's Judgment dated 10.05.2010, which has been upheld by the Supreme Court vide its order dated 03.12.2018, and is not applicable to the present case as it is related when the charges more than the tariff order are collected and licensee was allowed to refund the excess amount in terms of the Section 62(6) of the Electricity Act 2003, which is not the present case since the bills for the past period has been raised and paid as per tariff order of the State Commission and now refund/recovery is being done in terms of Impugned order dated 10.12.2024 which has calculated revised monthly tariff for the concerned period. The learned Senior Counsel referring to Section 56(2) of the

Electricity Act, 2003, also contended that recovery of arrears for the past period is not permissible.

Per contra, Mr. Shri Venkatesh, learned Counsel for the 2nd Respondent-DVC, submitted that there is no infirmity in the impugned order dated 10.12.2024, which has been passed upon remand by this Tribunal and the methodology of recovery/refund has already been stated in the order of the State Commission dated 31.10.2023 which has not been challenged by the Appellant, and therefore, such a finding has attained finality and cannot be raised in the present appeal. Learned counsel further submitted that on the basis of the impugned order dated 10.12.2024, 2nd Respondent-DVC has been refunding the excess tariff, wherever applicable, to the concerned consumers and grant of the interim stay for the recovery of the dues from the Appellant would cause substantial financial hardship and prejudice to 2nd Respondent-DVC. Balance of convenience lies in favour of DVC who is seeking to recover dues lawfully payable to it.

Heard Mr. Buddy Ranganathan, learned Senior Counsel for the Appellant and Mr. Shri Venkatesh, learned Counsel for the 2nd Respondent-DVC. We take note that the present case has a chequered history and chronology of various events is as under:

a) 06.08.2009 & 16.09.2009: The Central Electricity Regulatory Commission ("**CERC**"), vide its Order dated 06.08.2009, re-determined the generation and transmission tariff of Damodar Valley Corporation for the period from FY 2006-09. This Tribunal vide its interim order dated 16.09.2009 (in Appeal No. 146 of 2009) allowed West Bengal Electricity Regulatory Commission ("**WBERC**") and the Jharkhand State Electricity

Regulatory Commission to fix the retail supply tariff for FY 2010-11 by considering the generation and unified T&D tariff as approved by CERC as the input cost, but directed not to pass any final orders.

b) 10.05.2010 : This Tribunal, in its final order (in Appeal No. 146 of 2009), affirmed the order passed by CERC and directed DVC to issue refunds to its consumers and approach the Respondent Commission for finalization of its retail tariff.

c) 09.07.2010: The above judgment of this Tribunal was assailed before the Hon'ble Supreme Court in CA No. 4881 of 2010, wherein the Supreme Court ordered a partial stay limited to the directions of refund to the consumers.

d) 11.09.2012: The Appellant executed a bilateral Power Supply Agreement (**PSA**) with the 2nd Respondent- DVC for supply of power to them.

e) 22.11.2012: Provisional tariff orders were passed by Respondent Commission for:

(i) Estimation of ARR for FY 2006-07 to FY 2010-11 based upon the information submitted by DVC;

(ii) Projection of ARR for FY 2011-12 on the basis of past trends; and Projection of ARR and determination of retail supply tariffs for FY 2012-13.

f) 04.09.2014: The Respondent Commission determined the tariff for FY 2013-14 to FY2015-16 and did not undertake the true-up for FY 2006-07 to FY 2012-13 due to the pendency of C.A. No. 4881 of 2010 before the Supreme Court.

g) 26.10.2016 & 03.12.2018: The Supreme Court vide its judgment dated 26.10.2016 disposed of the Civil Appeal (*i.e., CA No. 7383 of 2016*) filed by another consumer with regard to true up of tariff for the concerned period, with directions to the Respondent Commission to undertake the true-up of previous years, subject to the final disposal of Civil Appeal No. 4881 of 2010 pending before it, which was eventually dismissed on 03.12.2018.

h) 30.09.2020: The State Commission in its tariff order dated 30.09.2020 for true up for the FY 2018-19, APR for FY 2019-20 and ARR and tariff for FY 2021 considered the road map of DVC and directed DVC to submit a separate petition along with requisite details such as consumer-wise and category-wise billing details for FY 2006-07 to FY 2011-12.

i) 31.10.2023: The Respondent Commission passed its Order (in Case No. 09 of 2020) for determination of ARR and Category-wise Tariff for the period FY 2006-07 to FY 2011-12, wherein, it considered the entire 'Other Income' of the Respondent No. 2- DVC based on its audited accounts as non-tariff income against the distribution business of DVC.

j) 05.02.2024: This Tribunal passed an order in the Appeal filed by the 2nd Respondent-DVC (Appeal No. 845 of 2023) setting aside the finding of the State Commission in its order dated 31.10.2023 in respect of re-determination of NTI and remanded the matter to the State Commission to consider only the NTI generated from the distribution business in the State of Jharkhand for working out the tariff schedule for various years from FY 2006-07 to FY 2011-12.

k) 23.07.2024: The State Commission passed the order subsequent to remand. However, the entire non-tariff income of the Appellant from various businesses like generation, transmission as appearing in the audited books of DVC for the concerned period was considered as NTI for the distribution business and determined the tariff schedule for the above referred period which was same as contained in the order dated 31.10.2023.

l) 15.10.2024: This tribunal vide its order dated 15.10.2024 in the Appeal (No. 332 of 2024) filed by the 2nd Respondent-DVC had set aside the impugned order dated 23.07.2024 to the extent that it considers entire NTI as the NTI for the distribution business and remanded the matter to the State Commission directing to calculate category-wise tariff for the period under consideration by taking into account only Delayed Payment Surcharge (DPS) as non-tariff income for distribution business.

m) 10.12.2024 (first impugned order): Subsequent upon remand, the State Commission re-determined the category-wise tariff for HT consumers for the period under consideration and directed the 2nd Respondent-DVC to report consumer-wise principal amount ought to be refunded or recovered and revise the electricity bills raised by DVC for electricity consumption during April 2006 onwards of its licensees and HT consumers and refund the excess amount billed and collected along with the interest @ 6% per annum.

n) 01.02.2025: The 2nd Respondent - DVC has raised a demand of Rs. 11,71,84,679/- upon the Appellant based on the Impugned order dated 10.12.2024, pertaining to FY 2006 to FY 2012 towards the net payable amount arrived at pursuant to adjustment of Old Dues, Delayed

Payment Surcharge ("**DPS**"), Excess Payment (if any), Shortfall in SD (if any) and carrying cost. The same was objected to by the Appellant vide its letter dated 27.02.2025.

o) 25.02.2025: The 2nd Respondent- DVC issued a Disconnection Notice to the Appellant, for incomplete payment of dues and further directing the Appellant to make complete payment of the dues within 15 days from the date of issuance of the said Notice, failing which the Appellant's power supply can be disconnected.

p) 04.03.2025: The Appellant denied the content of disconnection Notice.

q) 12.03.2025: The High Court of Jharkhand passed an order in Writ Petition (No. 1331 of 2025) filed by the Appellant, herein seeking directions to the State Commission/JSERC to urgently hear the Petition filed by them assailing the disconnection notice dated 25.02.2025 issued by DVC and to provide interim protection against the payment of Rs.11,71,84,679/- in terms of the demand notice dated 01.02.2025 issued by DVC, and provided interim protection to the Appellant-Jindal Steel from disconnection till the petition of the Appellant is taken up for consideration by the State Commission, and disposed of the Writ Petition.

r) 08.04.2025 (second impugned order): The State Commission vide its order dated 08.04.2025 (in Case No. 04 of 2025) filed by the Appellant-Jindal Steel, observed that *prima facie* the case appears to be a billing dispute and in terms of the Jharkhand State Electricity Regulatory Commission (Electricity Supply Code) Regulations 2015, the disputes related to the demand notice may be referred to Consumer Grievance Redressal Forum (CGRF) for adjudication and granted liberty to the

Petitioner to file its representation before the appropriate forum. The case was found to be not maintainable and was accordingly dismissed. It was further clarified that the electric connection of the consumer shall not be disconnected by the Respondent-DVC till the Petitioner files an application before the appropriate forum.

We note that subsequent to provisional tariff determination vide its order dated 22.11.2012 for the period under consideration, the State Commission in its order dated 31.10.2023 has worked out the category-wise retail supply tariff from FY 2006-07 to FY 2011-12, considering the entire non-tariff income on the audited accounts of DVC as non-tariff income for the distribution business and under Para 9.14 directed as under:

> *"9.14 DVC shall revise the monthly electricity bills of its licenses & HT Consumers for electricity consumption during April 06 to Mar 12 including other charges (viz. Load Factor Rebate, Voltage Rebate, etc.) and refund the net excess amount billed and collected or recover the net deficit amount along with simple interest rate of 6.00% per annum in line with Section 62 (6) of the Electricity Act, 2003, as per the APTEL Order dated 10.05.2010 which has been upheld by the Hon'ble Supreme Court vide its Order dated 03.12.2018."*

It is relevant to note that it is only the 2nd Respondent-DVC herein which preferred Appeal No.332 of 2024 against the aforesaid order. Consequently, the order of the Commission dated 31.10.2023 has attained finality in so far as the Appellant herein is concerned.

This Tribunal vide its Order dated 05.02.2024 in Appeal No. 845 of 2023 and Order dated 15.10.2024 in Appeal No. 332 of 2024 has remanded the matter to the State Commission with regard to the non-tariff income to be considered pertaining to only the distribution business, where the directions in the order dated 15.10.2024, pursuant to which the Impugned Order dated 10.12.2024 was passed by the State Commission which reads as under:

> *"45. Based on the above deliberations, the impugned order is stayed to the extent that it considers entire balance NTI, other than DPS, as NTI for distribution business and JSERC is directed, as observed in the impugned order, to calculate category wise tariff for the period under consideration, taking into account only delayed payment Surcharge (DPS) as non-tariff Income for Distribution Business, after apportioning it to Jharkhand area of sales vs total sales of DVC. Needless to state that the above directions are subject to the result of main appeal."*

The State Commission, upon remand, in the impugned order dated 10.12.2024, recomputed the ARR and category-wise tariff for the period FY 2006-07 to FY 2011-12 and at para 41 passed the following directives:

> *"41. The Commission in accordance with the Hon'ble APTEL judgement dated 10.05.2010, which has been upheld by the Hon'ble Supreme Court vide its Order dated 03.12.2018 hereby directs petitioner-DVC to:*
>
> *a) Report the consumer-wise principal amount to be refunded or to be recovered post implementation of the instant Tariff Order along with the Auditor's certificate providing the amount to be refunded within 30 days.*

b) Revise the electricity bills raised by DVC for electricity consumption during April, 2006 onwards of its licensees and HT Consumers and refund the excess amount billed and collected along with the interest at the rate of 6% per annum in line with section 62 (6) of the Electricity Act, 2003. Alternatively DVC may adjust the excess amount recovered, along with the interest at rate of 6% per annum, in 24 equal monthly prospective installments of the consumers/licensees.

c) Submit the monthly compliance report providing the status of refund or recovery as the case may be."

We note that Impugned order dated 10.12.2024 has been passed in pursuance to this Tribunal's order dated 15.10.2024 with regard to NTI for distribution business and DVC was directed to report principal amount to be recovered and refunded for the period under consideration as well as to refund the excess amount alongwith 6% interest per annum or adjust the said amount in the bills in 24 monthly instalments. Though the impugned order directs that the consumer bills of all the consumers were to be revised, there is no specific mention about the recovery methodology in case amounts are also to be recovered from the consumers, however, *prima facie,* the natural corollary of this direction would be to recover the amount due from consumers in the similar manner. *Prima facie,* we also find merit in the submissions of learned Counsel for the 2nd Respondent-DVC that the direction for revision of electricity bills for the concerned period as well as methodology mentioned under the Impugned Order dated 10.12.2024 is same as contained in the order dated 31.10.2023, which has not been assailed by the Appellant before any forum, and therefore has become final in so far as they are concerned, and cannot be put to challenge in the present Appeal.

Agreeing with the contention of the Appellant, that the refund/collection of excess/shortage amount is to be effected in the ARR of the subsequent years and not to the individual consumers, would mean that the other consumers for whom the refund amount has been worked out and being progressively refunded would also be affected and they need to be heard before passing any order; such an exercise can be undertaken only after they are also heard, and must await a final hearing of the main appeal. The various contentions raised by the Appellant in this regard need detailed examination which shall be dealt with at the time of final hearing of the appeal. The second impugned order dated 08.04.2025 is with reference to the clarifications sought by the Appellant with regard to Impugned Order dated 10.12.2024 and shall also be dealt with at the time when Appeal is finally heard.

Even if we were to presume that the Appellant has made out a *prima facie* case as the *sine qua non,* they must, in addition, satisfy one of the other two tests of balance of convenience and irreparable injury, for the grant of Interim Relief. Proceeding on the premise that the Appellant has made out a *prima facie* case, we shall examine whether one of the other two tests are satisfied.

As the grant of interim relief is discretionary, exercise thereof is subject to the court/tribunal satisfying itself that its interference is necessary to protect the party from the species of injury. In other words, irreparable injury would ensue before the legal right would be conclusively established. (**Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719**). The Court/Tribunal should satisfy itself that non-interference would result in "irreparable injury" to the party seeking relief and that he needs protection from the consequences of apprehended injury. Irreparable injury,

however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages **(Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719: AIR 1993 SC 276; Mahadeo Savlaram Shelke v. Puna Municipal Corporation, (1995) 3 SCC 33).**

We take note of the submissions of the Appellant that their Monthly energy Bill is in the range of Rs 8 to Rs 8.5 Crore, which has been paid regularly by them, and the monthly instalments, which has been reflected as arrears in the Monthly Energy Bill is of Rs. 48.82 lakhs. The monthly instalments, therefore, works out to about 5-6% of the monthly energy bills of the Appellant. It is not even contended by the Appellant in the IA seeking interim relief that they would suffer irreparable injury if the interim relief, sought by them, is not granted in their favour. It is not as if the Appellant will not be able to recover the amounts to be paid by them in terms of the Impugned Order dated 10.12.2024 from the 2nd Respondent - DVC in case the main appeal were to be allowed later.

As noted above, in terms of the Impugned order dated 10.12.2024, the 2nd Respondent -DVC has already started refunding the amount to the concerned consumers, as applicable, and granting the interim stay of the Impugned Order only for recovery of amount from the Appellant would prejudice the 2nd Respondent-DVC, as it would be required to continue to refund the amount, as applicable, to the concerned consumers and will not be able to recover the dues from the Appellant. Therefore, the balance of convenience lies in favour of the 2nd Respondent-DVC and not with the Appellant.

As noted hereinabove, besides satisfying the making out of a *prima facie* case test, the Appellant must also satisfy one of the other two tests of irreparable injury and balance of convenience, for them to claim entitlement for the grant of interim relief. The Appellant has failed to satisfy either one of these two tests.

For the reasons delineated above, the application for interim stay is hereby dismissed. Needless to state that the payment made in terms of the Impugned Order dated 10.12.2024 by the Appellant shall be subject to the result of the main appeal. It is clarified that the Appellant is free to take legal recourse available to them, in reference to Section 56(2) of the Electricity Act, 2003, before the appropriate forum.

After pleadings are complete, Registry to verify the same and then include the appeal in the 'List of Finals' to be taken up from there, in its turn.

Pronounced in open court on this the 30th day of May, 2025

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

Reportable / ~~Non-Reportable~~

ts/ag/dk