

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

**Present: Shri U. N. Behera, Chairperson
Shri G. Mohapatra, Member**

Case No. 27/2019

M/s. Jindal Stainless Ltd.

..... Petitioner

Vrs.

A.O, NESCO Utility & another

.....

Respondents

In the matter of: An application under Ss. 142 & 146 of the Electricity Act, 2003 for Non-Compliance of the order dated 26.2.2018 passed in Case Nos. 12 & 14 of 2015 and Order dated 09.04.2019 passed in Case Nos. 12 & 26 of 2018 of the Commission.

For Petitioner: Shri Rajendra Prasad Panigrahi, AGM (Legal) along with Hitendra Ratha, Advocate.

For Respondents: Shri Pramod Kumar Nayak, the Executive Engineer, JRED, Jajpur Road, TPNODL and Ms. Anuja Jain, Advocate.

ORDER

Date of hearing: 14.12.2021

Date of order: 14.12.2021

Due to Covid-19 pandemic situation the Commission had decided to hear the matter through Video Conferencing in the Virtual Court on 14.12.2021. Accordingly the parties had been intimated. The memo filed through affidavit by the respondents along with the order dated 30.11.2021 of the Hon'ble APTEL passed in Appeal No. 186/2020 are taken into record.

2. During hearing the Counsel of the petitioner submitted that earlier late Banoj Kumar Pattanaik, Advocate was engaged by M/s. Jindal Stainless Ltd.-the petitioner herein to put forth the matter before the Commission. After demise of the said Counsel, now the petitioner has engaged him to conduct the above matter, therefore he prays to allow him for filing of Vakalatnama and synopsis of the matter along with written note of argument.
3. Ms. Anuja Jain, Advocate appearing on behalf of the Respondents submits that M/s. Jindal Stainless Ltd. has filed the above case under Sections 142 & 146 of the Electricity Act, 2003 for non-compliance of the Commission's order dated 26.02.2018 passed in Case Nos. 12 & 14 of 2015 and Order dated 09.04.2019 passed in Case Nos. 12 & 26 of 2018. The Commission while disposing of the Case Nos. 12 & 14 of 2015 had directed the respondents that the transaction for the period from 01.07.2012 to 31.07.2015 should fall in the category of

“Emergency Supply to CGP” under Regulation 80(15) of the Supply Code which existed on 30.06.2012. Being aggrieved by the said orders of the Commission the then NESCO utility (now TPNODL) has preferred Appeal No.186 of 2020 before the Hon’ble APTEL, New Delhi under Section 111 of the Electricity Act, 2003 with a prayer to set-aside the order dated 26.02.2018 passed in Case Nos. 12 & 14 of 2015 and Order dated 09.04.2019 passed in Case Nos. 12 & 26 of 2018 and remand the matter for fresh adjudication. The Hon’ble APTEL vide their order dated 30.11.2021 in Appeal No. 186/2020 while disposing of has been pleased to pass the following order :

- “17. In the foregoing facts and circumstances, with the consent of the Appellant and the First Respondent, we set aside the impugned order, since it suffers from the vice of perversity, material documents having been overlooked. We remit the matter involving the issue of re-classification to the State Commission for a fresh decision. Needless to add, if the contentions of the Appellant about a case for re-classification under Regulation 82 of the Supply Code are upheld by the State Commission, it shall also proceed to examine as to how the differential in the applicable tariff for the period in question is to be determined and recovered, and issue all necessary directions in such regard as well.**
- 18. The State Commission will hear all parties afresh, not feeling bound by the view taken earlier and pass the requisite order, in accordance with law expeditiously, preferably within three months of this Judgment. While the State Commission is awaited to render its fresh decision in terms of the above direction, neither side will take any precipitative action Vis-a vis the pending invoices issued by the Appellant and the proceedings taken out in that regard by JSL. The parties are directed to appear before the State Commission on 13.12.2021.**
- 19. The Appeal is disposed of in the above terms.”**

As per the above Judgment of the Hon’ble Tribunal, the parties have appeared today before the Commission through their Counsels. The Counsel for the Respondent prays for re-opening of Case Nos. 12 & 14 of 2015 and Case Nos. 12 & 26 of 2018 for fresh adjudication and allow her to file synopsis of the dates and written note of arguments within seven days.

4. Heard the parties and perused the Judgment of the Hon’ble APTEL passed in Appeal No.86 of 2020. We find that the Hon’ble APTEL has directed that the State Commission will hear all parties afresh not feeling bound by the views taken earlier and pass the requisite order. Therefore, there is no propriety to proceed with this Execution Proceeding and the case stands closed.

As per Judgment of the Hon’ble APTEL in Appeal No.186 of 2020, we re-open Case Nos.12 & 14 of 2015 and Case Nos.12 & 26 of 2018 for adjudication afresh. Prayer of the parties for filing of synopsis of the events date-wise and their written note of arguments basing on their original submissions/pleadings on or before 21.12.2021 by

TPNODL and M/s JSL by 28.12.2021 is allowed. No new plea beyond the original pleadings shall be entertained.

5. On behalf of M/s JSL, their inability to make submissions on 21.12.2021 has been stated and keeping the inability of the parties and the target in view, it is felt that rival side will not be prejudiced if the TPNODL is heard on 21.12.2021 with opportunity to make rebuttal submissions. Accordingly fix the case Nos.12 & 14 of 2015 and Case Nos.12 & 26 of 2018 for adjudication afresh on 21.12.2021 for hearing from the side of TPNODL (the then NESCO) and the matter shall be posted again to 28.12.2021 for hearing the submission on behalf of the M/s JSL.
6. Accordingly, the case is disposed of.

Sd/-
(G. Mohapatra)
Member

Sd/-
(U. N. Behera)
Chairperson