

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 211/MP/2016

Coram:

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M. K. Iyer, Member

Date of Order: 27th February 2018

In the matter of

Petition under Section 19 of the Electricity Act, 2003 read with Regulation 14 and Regulation 7 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 seeking revocation of the Inter-State Trading Licence granted to M/s Global Energy Private Limited.

And

In the matter of

Jindal Power Limited
District Raigarh, Tamnar-496 107,
Chhattisgarh

....Petitioner

Vs.

Global Energy Private Limited
6th Floor, Le Meridien Commercial Tower,
Raisina Road, New Delhi-110 001

....Respondent

Parties Present:

Shri M.G. Ramachandran, Advocate, JPL
Shri S. Venkatesh, Advocate, JPL
Shri Pratyush Singh, Advocate, JPL
Shri Shreshth Sharma, Advocate, JPL
Shri Anshuman Sharma, Advocate, JPL
Ms. Anushree Bardhan, Advocate, JPL
Shri Shwaranjan, JPL
Shri S. Ganesh, Senior Advocate, GEPL
Shri Matrugupta, Advocate, GEPL
Shri Hemant Singh, Advocate, GEPL



ORDER

This Petition has been filed by the Petitioner, Jindal Power Limited, under Section 19 of the Electricity Act, 2003 read with Regulation 14 of the Central Electricity Regulatory Commission (Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 for revocation of inter-State trading licence granted to the Respondent, Global Energy Private Ltd. (GEPL).

Brief Facts of the case

2. The Petitioner has set up a 3400 MW coal based thermal power plant at Tamnar, District Raigarh in the State of Chhattisgarh. The Respondent, GEPL is a Category-I inter-State Trading Licensee under the jurisdiction of this Commission. The Petitioner entered into an agreements with GEPL through binding Letter of Intents (LoI) for supply of power for the following periods:

| Date of LoI | Period of Supply |
|--------------------|-------------------------|
| 17.9.2014 | 1.10.2014 to 31.3.2015 |
| 30.3.2015 | 1.4.2015 to 30.9.2015 |
| 18.8.2015 | 1.9.2015 to 31.3.2016 |

3. The Lols contain *inter-alia* by the following terms and conditions for supply of power with regard to the payment of bills:

- (i) As per clause 8 of the LoI, within 15 days of submission of bills by the Petitioner, the Respondent is obligated to pay the bill amount to the Petitioner.
- (ii) As per clause 10 of the LoI, late payment surcharge @1.25% per month is leviable after 30th day from the receipt of bill in



case of Lol dated 17.9.2014 and after 16th day from the receipt bill in respect of Lol dated 30.3.2015 and 17.8.2015.

- (iii) As per clause 18 of the Lol, GEPL is required to open Letter of Credit/Bank Guarantee as payment security mechanism in favour of the Petitioner.

4. Pursuant to Lol dated 17.9.2014 for supply of power from 1.10.2014 to 31.3.2015 which was accepted by the Respondent, the Petitioner supplied power during the said period and raised monthly bills upon the Respondent. The Respondent did not make full payment for the month of February 2015 and March 2015. As against the bill of ₹44.70 crore or (₹20.90 crore for February 2015 and ₹23.80 crore for March 2015) GEPL made a payment of ₹20 crore, leaving an outstanding amount of ₹24.7 crore towards late payment surcharge. GEPL vide its letter dated 27.3.2015 submitted six post-dated cheques as under:

| S. No. | Cheque No. | Amount (₹) | Date |
|--------|------------|-------------|------------|
| 1. | 498717 | 2,50,00,000 | 28.5.2015 |
| 2. | 498718 | 2,50,00,000 | 28.6.2015 |
| 3. | 498719 | 2,50,00,000 | 28.7.2015 |
| 4. | 498720 | 3,40,29,303 | 28.8.2015 |
| 5. | 498721 | 2,50,00,000 | 28.9.2015 |
| 6. | 498722 | 2,50,00,000 | 28.10.2015 |

Further, GEPL also furnished two bank guarantees for a total amount of ₹12 crore in favour of the Petitioner valid till 31.10.2015 as payment security mechanism.

5. The Petitioner issued an Lol dated 30.3.2015 for supply of power from 1.4.2015 to 30.9.2015 which was accepted by the Respondent. The Respondent vide its letter dated 16.4.2015 furnished five post-dated cheques for ₹13,80,42,556/-



towards balance outstanding dues for the power supplied pursuant to Lol dated 17.9.2014 as under:

| S. No. | Cheque No. | Amount (₹) | Date |
|---------------|-------------------|-------------------|-------------|
| 1. | 504851 | 2,50,00,000 | 28.6.2015 |
| 2. | 504852 | 2,50,00,000 | 28.7.2015 |
| 3. | 504853 | 2,50,00,000 | 28.8.2015 |
| 4. | 504854 | 2,50,00,000 | 28.9.2015 |
| 5. | 504855 | 3,80,42,556 | 28.10.2015 |

6. The Respondent, vide its letters dated 22.5.2015, 11.6.2015, 16.6.2015 requested the Petitioner for downward revision of tariff which was rejected by the Petitioner vide its e-mail dated 17.6.2015. The Respondent vide its letter dated 22.6.2015 expressed its inability to execute the agreement in terms of the Lol dated 30.3.2015 alleging unviable tariff. The Respondent vide its letters dated 21.7.2015 and 6.8.2015 requested the Petitioner for the change of terms and conditions of Lol dated 30.3.2015. After negotiation between the Petitioner and the Respondent with regard to the terms and conditions of fresh Lol and payment of outstanding dues for the energy supplied for the period 1.2.2015 to 30.6.2015, the Petitioner issued a fresh Lol dated 18.8.2015 for supply of power to the Respondent for the period from 1.9.2015 to 31.3.2016. The Respondent vide its e-mail dated 19.8.2015 accepted the terms and conditions of Lol dated 18.8.2015.

7. The Respondent vide its letter dated 21.8.2015 informed the Petitioner that due to non-availability of NoC from MSEDCL, it is not able to implement the terms and conditions agreed under the Lol dated 18.8.2015 and requested the Petitioner to amend the disbursement dates and the effective period of the said Lol from 1.10.2015 to 30.4.2016. The Petitioner vide its letter dated 9.9.2015 withdrew the Lol dated 18.8.2015 and requested the Respondent to make payment of the outstanding



dues for past supplies made by the Petitioner.

8. Subsequently, the Petitioner presented two cheques issued by the Respondent numbered as 498721 and 504854 (both dated 28.9.2015 and drawn on ICICI Bank, Greater Kailash Branch) for encashment with its bank, namely State Bank of India, Corporate Accounts Group Branch, Connaught Place, New Delhi-110001 on 28.9.2015. The above said two cheques were returned to the Petitioner dishonored vide the returning Cheque memos numbered as 201005/201003/480 and 201005/201003/490, both dated 29.9.2015 with the remark "*payment stopped by drawer*". Pursuant to the dishonor of the cheques, the Petitioner encashed the bank guarantee of ₹12 crore on 29.9.2015 for securing its outstanding payment.

9. The Respondent filed a Civil Suit before the Hon'ble Delhi High Court being CS(OS) 2964 of 2015 seeking a decree of permanent injunction against the Petitioner and to restrain the Petitioner from invoking the bank guarantee furnished by the Respondent. The said Civil Suit was dismissed by the Single Judge of Hon'ble Delhi Court vide order dated 28.9.2015 holding that the suit was not maintainable in the light of the principles laid down in the judgment of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd [(2008) 4 SCC 755] and judgment of the Delhi High Court in PTC India Limited Vs. Jaiprakash Power Ventures Ltd. [(2012) (5) R.A.J. 617 (Del.)]. GEPL filed an Appeal before the Division Bench against the said order in RFA (OS) 93/2015 raising the issue of jurisdiction. The Hon'ble Delhi High Court vide its order dated 6.10.2015 remanded the matter to the Ld. Single Judge to adjudicate on the matter again including on the issue of Jurisdiction.



10. On 28.10.2015, the Petitioner presented another two cheques (Nos. 498722 and 504855, dated 28.10.2015) for encashment. However, both cheques were returned on 28.10.2015 with the remark 'cheques stopped by drawer'. Thereafter, the Petitioner issued a legal notice dated 26.10.2015 to the Respondent under Section 138 of the Negotiable Instruments Act, 1938. Thereafter, the Petitioner initiated proceedings against the Respondent under Section 138 of the Negotiable Instruments Act, 1881 before the Metropolitan Magistrate, Patiala House Courts, New Delhi being CC No.118/1/16. The Metropolitan Magistrate issued summon on 10.5.2016 against the Respondent. Thereafter, the Respondent filed appeal before the Additional Sessions Judge, Patiala House. The Respondent also filed an CS (OS) 2694 of 2015 before the Hon`ble High Court of Delhi seeking stay of the invocation/encashment of the bank guarantee. During the pendency of the above noted proceedings before the Delhi High Court and The Additional Sessions Judge, Patiala House, Delhi, the Petitioner has filed the present petition seeking revocation of inter-State trading licence granted to the Respondent.

Case of the Petitioner

11. The Petitioner has filed the Petition under Section 19 of the Electricity Act, 2003 read with Regulations 7 and 14 of the Trading Licence Regulations. Section 19 of the Act deals with revocation of licence. Regulations 7 and 14 of the Trading Licence Regulations deal with obligations of the trading licensee and revocation of licence respectively. According to the Petitioner, GEPL as a trading licensee of the Commission is not only required to carry out trading in accordance with agreed terms and conditions but is required to ensure timely payment of the dues to the seller for purchase of the agreed quantum of electricity in terms of Regulation 7(h)



of the Trading Licence Regulations. The Petitioner has submitted that the Respondent in contravention of Regulation 7(a), (c), (d) and (h) of the Trading Licence Regulations and the terms and conditions of the LOIs dated 17.9.2014 and 30.3.2015 has made defaults in payment of dues to the Petitioner with regard to the purchase of electricity. The Petitioner has submitted that the actions of the Respondent being in violation of the provisions of Regulation 7 of the Trading Licence Regulations, its licence should be revoked under Section 19 of the Act read with Regulation 14 of the Trading Licence Regulations. The Petitioner has made the following prayers in the petition:

“(a) Initiate appropriate proceedings under Section 19 of the Electricity Act, 2003 read with Regulation 14 of the 2009 Regulations for revocation of the inter-State trading licence granted to the Respondent No. 1/GEPL;

(b) Revoke the inter-State trading licence of GEPL;

(c) Alternatively, direct GEPL to cure its continuous, prolonged and willful default committed under the terms and conditions of its licence read with 2009 Regulations, failing which its licence shall be revoked;

(d) Suspend the trading licence as an interim measure; and

(e) Pass any other or further order(s) as this Commission may deem fit and proper in facts and circumstances of the present case.”

12. Notice was issued to the Respondent on admissibility of the petition. The Petitioner was directed to place on record the status of the civil suit pending before the Hon`ble High Court of Delhi and the proceedings initiated against the Respondent before the Metropolitan Magistrate, Patiala House Court. The Petitioner vide its affidavit dated 21.1.2017 has placed on record the status of the cases filed by the Petitioner as well as the Respondent before Delhi High Court and Additional Sessions Judge, Patiala House.



I A No.21/2017 filed by GEPL

13. The Respondent has not filed any reply to the Petition. On the other hand, the Respondent has filed the IA No. 21 of 2017 seeking dismissal of the main petition on the following grounds:

(a) Since the same issues in an earlier instituted suit are pending before the High Court of Delhi, the present petition is not maintainable on account of the bar specified in Section 10 of the CPC. The issues involved in the present petition and in the IA No. 2487/2016 in CS (COMM) 174 of 2016 are similar which are pending for adjudication before the High Court. Since the civil suit filed before the Hon`ble High Court of Delhi has been instituted prior to the present petition, the present petition is liable to be dismissed on account of the principles enumerated in Section 10 of the Code of Civil Procedure, 1908. It is a settled principle of law that CPC is a codification of civil jurisprudence and its principles are applicable to all civil proceedings unless there is some rule/regulation/law to the contrary.

(b) For the purposes of granting prayers (a), (b) and (d) of the present petition, this Commission has to necessarily go into the issue as to "whether the Petitioner was correct in terminating the letter/LOI dated 18.8.2015 or that it is the Respondent which has to receive an amount of ₹20.33 Crore from the Petitioner". The said issue is in the nature of a pure money claim between the parties. Even the prayer (c) of the petition, which is an alternative prayer and seeks directions upon the Respondent to cure the alleged default committed by the Respondent qua the events related to the alleged wrongful termination of LOI dated 18.8.2015 is a direct money claim. As per the



provisions of Section 79 of the Electricity Act 2003, this Commission does not have the jurisdiction to adjudicate or give any findings with respect to the above issues concerning a trading licensee and a generating company. Though this Commission has power to decide whether to cancel the license or not, but for deciding the same, the Commission does not have power to go into the commercial dispute/issues between a generator and a trading licensee which is outside the ambit of Section 79. Therefore, any proceedings for revocation of licence, at best, can only be initiated against the Respondent in the event any competent court of law holds that the said Respondent has committed any offence in addition to wrongful withholding of money.

(c) The Respondent has filed a civil suit, being CS (COMM) 174 of 2016, against the Petitioner, long before the initiation of the present proceedings with regard to the disputes between the Petitioner and the Respondent. The Division Bench of the Delhi High Court vide its order dated 6.10.2015 has remanded the matter to the Single Judge to decide the issue of jurisdiction of the Commission to adjudicate the dispute between a generating company and trading licensee. Therefore, the present proceeding may be put in abeyance and the decision of the Single Judge of the Hon'ble High Court of Delhi on the question of jurisdiction of this Commission be awaited.

(d) Paras 3, 10, 32, 33, 39 and Grounds F and H of the Petition relate to alleged commission of "fraud" by the Respondent. These are allegations which are criminal in nature, defined under various provisions of the Indian Penal Code, 1860, and can only be established in a criminal court, after a trial. Only when



the proceedings pending before the Hon'ble Delhi High Court attain finality and that too in the favour of the Petitioner herein, with specific findings related to commission of fraud by the Respondent herein, the Petitioner can allege such a fraud before this Commission.

(e) There is a dispute with respect to the illegal actions of the Petitioner in seeking to terminate the Lol dated 18.8.2015 executed with the Respondent. The said illegal termination and the cessation of power supply by the Petitioner resulted in the Respondent suffering losses of around ₹20.33 crore on account of arranging alternate source of power for onward supply to the HT end consumers in the State of Maharashtra.

(f) The Petitioner, vide its affidavit dated 3.4.2017 has placed on record the order dated 21.3.2017 of the Delhi High Court in IA No. 2487/2016 in CS (COMM) 174 of 2016 wherein the High Court has only limited its observation with respect to the jurisdiction of the other authorities. The main prayer of the Petitioner in the present proceedings is to seek revocation/suspension of the inter-State trading licence issued to the Respondent on account of non-payment of money, which is subject matter of the proceedings before the High Court of Delhi. Unless there is an adjudication that GEPL owes money and has committed a fraud, the relief claimed in the present petition cannot be granted.

14. The Petitioner has refuted the above submissions of the Respondent as under:

(a) As regards the submission that the pending adjudication in the prior instituted suit before the Hon'ble High Court of Delhi makes the present petition not



maintainable, the Petitioner has submitted that the Petitioner has invoked the statutory jurisdiction of the Commission vested by Section 19 of the Act. Even if the relief sought by the Petitioner is prayed before the Hon'ble Delhi High Court, the same cannot be granted by the Hon'ble High Court in terms of the scheme of the Act and mandate of the Hon'ble Supreme Court expressed in a plethora of Judgments making Electricity Act, 2003 a complete comprehensive code.

(b) The Hon'ble Delhi High Court vide its order dated 21.3.2017 has clarified that there is no stay in the said Civil Suit (being CS (Comm.) 174 of 2016) and pendency of the said Suit does not bar the other Authorities to act within its jurisdiction. Therefore, reliance by the Respondent on Section 10 of the CPC is completely misplaced.

(c) Moreover, the proceedings before the Hon'ble High Court of Delhi and before the Commission are independent and mutually exclusive and the reliefs have been sought in terms of completely distinct statutes. Therefore, the pendency of the Civil Suit before the Hon'ble High Court in no manner affects the statutory right of the Petitioner and the power of this Commission mandated under Section 19 of the Act.

(d) Pendency of Section 138 of the Negotiable Instruments Act before the District Courts at Patiala House, New Delhi not an impediment to proceed with present proceedings. The Respondent reliance upon the argument that it cannot be compelled to disclose its defense, in the collateral proceedings, is misleading as it is settled law that the protection envisaged under Article



20 (3) of the Constitution of India is not applicable in the case of subsequent civil proceedings. The Petitioner cannot be told to wait till the final result of the criminal proceedings and if that is done, the statutory remedy would be wholly frustrated and stultified.

(e) The Procedure to be adopted by this Commission for taking cognizance of the offence is set out in/governed by Regulation 14 B of the Trading Licence Regulations. The Commission can take cognizance in the present case as long as it is satisfied that the information filed by the Petitioner clearly demonstrates violation of Section 19 of the Act read with Regulation 7 and 14 of the Trading Licence Regulations.

Submissions of the parties during the hearing

15. During the hearing of the Petition, learned senior counsel for GEPL submitted that the present petition is an abuse of the process of law and is filed to claim illegal monies by the Petitioner. GEPL has not defaulted in making any payments to the Petitioner and on the other hand, the Petitioner has to compensate GEPL for wrongfully terminating the LOI dated 18.8.2015. Learned senior counsel submitted that GEPL filed a suit for Declaration and Permanent Injunction being CS(OS) 2964 of 2015 before the Delhi High Court to restrain the Petitioner from invoking the Bank Guarantee furnished by GEPL. The said suit was dismissed by the Delhi High Court vide order dated 28.9.2015 stating that the suit is not maintainable as the jurisdiction to adjudicate upon a dispute between licensee and generator vests with the Commission. Thereafter, GEPL filed an appeal against the order dated 28.9.2015. The said appeal was allowed by the Delhi High Court vide order dated 6.10.2015 and the said matter was remanded back to the Ld. Single



Judge with directions to adjudicate on the matter again including on the issue of jurisdiction. Presently, the civil suit filed by GEPL bearing No. CS (Comm) 174 of 2016 (restoration of CS(OS) 2964 of 2015) is pending before the Delhi High Court. The entire foundation of the present petition for revocation of licence is the Petitioner's defence in the High Court, which cannot form the basis of any revocation of licence. Having taken that defence, and when the matter is sub-judice, the defendant in the civil suit cannot now ask this Commission to rule on the subject. Learned counsel further submitted that there are also certain proceedings relating to Section 138 of the Negotiable Instruments Act, 1881 initiated by the Petitioner before the District Courts at Patiala House, Delhi. Through the present petition, GEPL cannot be compelled to disclose its defence in the collateral proceedings. Learned senior counsel further submitted that the Petitioner, vide affidavit dated 3.4.2017, has placed on record the order dated 21.3.2017 of the Delhi High Court in I.A. No. 2487/2016 wherein the High Court has only limited its observation with respect to the jurisdiction of the other authorities. Learned counsel submitted that the main prayer of the Petitioner is to seek revocation/suspension of the inter-State trading license of GEPL on account of non- payment of money, which is pending before the Delhi High Court and unless there is an adjudication that GEPL owes money and has committed a fraud, the relief claimed in the present petition cannot be granted.

16. Learned counsel for the Petitioner submitted that the present petition has been filed by the Petitioner for revocation of the inter-State trading licence granted to GEPL under Section 19 of the Electricity Act, 2003 (the Act) read with Regulations 14 and 7 of the Central electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009



which as a subject matter falls within the exclusive jurisdiction of the Commission. Learned counsel submitted that GEPL filed a suit for Declaration and Permanent Injunction before the Delhi High Court to restrain the Petitioner from invoking the Bank Guarantee furnished by GEPL. Thereafter, GEPL filed an application for amendment of its suit seeking enlargement of the scope by entirely changing the nature of the suit which was originally a suit for declaration and permanent injunction to a suit for damages. Learned counsel submitted that the relief sought by the Petitioner in the present petition is independent of the relief being sought by the Respondent in the Civil Suit pending before the Hon'ble Delhi High Court which can only be granted by the Commission under its statutory Power conferred upon it under the Act. Learned counsel submitted that Hon'ble Delhi High Court vide its order dated 21.3.2017 held that the pendency of the Civil Suit filed by GEPL does not restrict the Commission to act within its jurisdiction. Therefore, all ambiguity concerning the maintainability of the present petition has been cleared.

Analysis and Decision:

17. The Petitioner has submitted in its written submission that the Respondent GEPL has filed Interlocutory Application No. 21 of 2017 for dismissal of the petition. The Petitioner has submitted that since the Commission has not issued notice on the said IA, the Petitioner is confining its submissions on the issue of maintainability and reserves the right to file a detailed submission as and when directed by the Commission on the IA filed by GEPL. The Petitioner has submitted that despite specific directions, the Petitioner has not filed any reply to the petition. We notice that in the record of proceedings dated 20.12.2016, the Commission had directed the Respondent to file its reply to the Petition and the Commission fixed the matter



for hearing on admissibility of the petition on 23.2.2017. The Respondent has not filed any reply nor has sought any permission to be exempted from filing reply to the petition. However, the Respondent has filed IA No. 21 of 2017 challenging the maintainability of the Petition. The IA was listed for hearing on 27.4.2017 alongwith the main petition and both the Petitioner and Respondent advanced their arguments on maintainability and the Commission after hearing the parties reserved order on the said issue of maintainability. In its written submission, the Respondent has referred to the various prayers made in the Petition and has made its submission. Since the IA was filed challenging the maintainability of the petition and both parties have advanced their respective arguments on the issue of maintainability, we do not feel that there is any requirement for issuing separate notice in the IA. We are proceeding to decide the issue of maintainability based on the pleadings in the Petition, IA No. 21 of 2017, oral submissions during the hearing and the written submissions filed by the parties.

18. The Petition has been filed under Section 19 of the Act read with Regulation 14 of the Trading Licence Regulations for alleged violation of Regulation 7 of the Trading Licence Regulations by the Respondent GEPL. Accordingly, the Petitioner's first prayer relates to initiation of appropriate proceedings under Section 19 of the Act read with Regulation 14 of the Trading Licence Regulations for revocation of the inter-State trading licence granted to the Respondent GEPL. The Petitioner has also prayed for revocation of licence granted to the Petitioner and for suspension of the trading licence as an interim measure. An alternative prayer has been made seeking directions to the Respondent GEPL to cure its continuous, prolonged and willful default committed under the terms and conditions of its licence



read with Trading Licence Regulations, failing which to revoke the licence of the Respondent GEPL.

19. GEPL has submitted that the petition is not maintainable for several reasons. Firstly, since the earlier suits involving similar issues are pending before the Hon'ble High Court of Delhi, the present petition is not maintainable in view of the bar under Section 10 of the CPC. Secondly, for exercising of power under Section 19 of the Act, the Commission has to adjudicate the dispute between the parties i.e. a generating company and a trading licensee in this case which is outside the jurisdiction of the Commission under Section 79 of the Act. Thirdly, the Division Bench of the Hon'ble High Court of Delhi has remanded the matter to the Single Judge to determine the issue of jurisdiction of the Central Commission to adjudicate the dispute between the generating company and the trading licensee and therefore, the present petition be kept in abeyance till the issue is decided by the Hon'ble Single Judge. Fourthly, the Petitioner has alleged fraud against GEPL which can only be established in a Criminal Court after a trial. Only after the proceedings pending before the High Court of Delhi attain finality and in favor of the Petitioner, then only the Petitioner can allege fraud against GEPL before the Commission.

20. The disputes between the Petitioner and Respondent instituted prior to the filing of the present petition are briefly discussed as under:

- (a) The Respondent GEPL filed a suit for declaration and permanent injunction being CS (OS) 2964 of 2015 before the Hon'ble High Court of Delhi seeking a decree of permanent injunction against the Petitioner and to restrain the



Petitioner from invoking the bank guarantee furnished by the Respondent. The Single Judge of the Hon'ble High Court of Delhi in order dated 28.9.2015 dismissed the suit stating that the suit is not maintainable as the jurisdiction to adjudicate upon a dispute between the licensee and the generator vests with the Regulatory Commission.

(b) Aggrieved by the said order dated 28.9.2015, the Respondent GEPL filed an appeal No. RFA (OS) 93/2015 before the Division Bench of the Hon'ble High Court of Delhi. The Division Bench of the Hon'ble High Court of Delhi in order dated 6.10.2015 allowed the said appeal and remanded the matter back to the learned Single Judge with direction to adjudicate on the matter again including on the issue of jurisdiction.

(c) The Respondent GEPL filed CS (COMM) No. 174 of 2016 under Order VI Rule 17 of the Code of Civil Procedure, 1908 before the Hon'ble High Court of Delhi seeking damages from the Petitioner to the tune of ₹20.33 crore.

(d) The Petitioner filed two separate complaints (CC No. 1390/1/2015 and CC No. 118/1/2016) against the Respondent under Section 138 read with Section 141 of the Negotiable Instruments Act before the Metropolitan Magistrate, Patiala House Court, New Delhi. The Metropolitan Magistrate vide orders dated 11.12.2015 and 10.5.2016 issued summons to the Respondent GEPL.

(e) One of the Directors of the Respondent GEPL, namely, Shri Suresh Velappan filed Criminal Miscellaneous Petition bearing No. 1885 of 2016 under Section 482 of the Code of Criminal Procedure before the Hon'ble



High Court of Delhi for quashing of the CC No. 1390/1/2015 and summoning order dated 11.12.2015 passed by the Metropolitan Magistrate. The Petitioner filed a Miscellaneous Application in Criminal Miscellaneous Petition No. 1885 of 2016 under Section 340 read with Section 195 (1) (b) of the Code of Criminal Procedure alleging that the Respondent deliberately suppressed and concealed materials and critical documents. The CMP of the Respondent and MP of the Petitioner are pending before Hon'ble High Court.

- (f) Another Director of the Respondent GEPL, namely, Shri Harry Inder Dhaul, filed Criminal Revision Petition No. 8708 of 2016 against CC No. 118/1/2016 before the Court of District and Session Judge, Patiala House seeking to set aside the summoning order dated 10.5.2016 passed by the Metropolitan Magistrate in CC No. 118/1/2016. The District and Session Judge vide order dated 28.11.2016 dismissed the said Criminal Revision Petition. Subsequently, Sh. Harry Inder Dhaul filed a Criminal Miscellaneous Petition No. 4720 of 2016 before the Hon'ble High Court of Delhi for quashing of the order of the District and Session Judge dated 28.11.2016. The Hon'ble Delhi High Court vide its order dated 19.12.2016 refused to interfere with the order dated 28.11.2016 passed by the District and Session Judge. The matter is presently pending before the Hon'ble Delhi High Court.

21. From the above, it emerges that presently, two criminal complaints are pending before the Metropolitan Magistrate against two of the Directors of the Respondent Company under Section 138 read with Section 141 of the Negotiable Instruments Act, 1938. Against the notices, two Criminal Miscellaneous Petitions are pending before Hon'ble High Court. One Civil Suit filed by the Respondent



claiming damages against the Petitioner is also pending. The Commission does not have the jurisdiction to deal with any of the matters involved in either the Criminal Miscellaneous Petitions or Civil Suit claiming the damages and therefore, pendency of these matters before the Hon'ble High Court will not act as a bar on the Commission in terms of Section 10 of the CPC to exercise its jurisdiction vested in the Commission under the Electricity Act, 2003.

22. Another Civil Suit filed by Respondent is pending before the Hon'ble Single Judge after being remanded by the Division Bench of the Hon'ble High Court. To briefly refer to the background of the said suit, GEPL filed CS(OS)2964/2015 before the Hon'ble High Court of Delhi seeking injunction against encashment of Bank Guarantee and post-dated cheques by the Petitioner. The Petitioner in the said suit challenged the maintainability of the petition on the ground that the suit was barred by the provisions of the Electricity Act, 2003. Learned Single Judge of the Delhi High Court in order dated 28.9.2015 by relying on the judgments of Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd [(2008) 4 SCC 755] and judgment of the Delhi High Court in PTC India Limited Vs. Jaiprakash Power Ventures Ltd. [(2012) (5) R.A.J. 617 (Del.)] decided that the suit was not maintainable before the High Court. On appeal, the Division Bench of the Hon'ble High Court in order dated 6.10.2015 in RFS (OS) 93/2015 set aside the order of the Learned Single Judge and remanded the matter with the following observations:

"1. Vide impugned order dated September 28, 2015, with reference to Section 86 (1) (F) of the Electricity Act, 2003 as also the law declared in the decisions reported as 2008 (4) SCC 755 Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. and 2012 (5) RAJ 617 PCT India Ltd Vs. Jaiprakash Power Ventures Ltd the suit for injunction filed by the appellant seeking to restrain the Respondent from invoking two bank guarantees has been held to be not maintainable.



2. Since we are remanding the matter to the learned Single Judge because of the perfunctory nature of the impugned order, lest parties are prejudiced before the learned Single Judge on the maintainability of the suit. We would need to highlight that the decision in Jaiprakash Power Venture Ltd's case (supra) would not be a precedent because the decision was rendered with reference to an award passed by an Arbitral Tribunal and before the Tribunal no objection was raised that it had no jurisdiction to decide the dispute. The arguments concerning said issue which have been noted by the learned Single Judge who authored said decision in paragraphs 44 to 49. Since no objection was raised before the Tribunal concerning the exclusive jurisdiction of the Central Electricity Regulatory Commission, the learned Single Judge rejected the jurisdictional challenge. The other decision in Gujarat Urja Vikas Nigam Ltd's case was rendered with respect to a dispute concerning a power generating company, electricity distributing company and a captive consumer of power purchasing directly from the Vikas Nigam. The facts were that Gujarat Urja Vikas Nigam Ltd had a license to generate 515 MW electricity out of which it had to allocate 300 MW to the Gujarat Electricity Board for purposes of distribution to consumers in the State of Gujarat i.e. the State Board was a distributing licensee, and the remaining 215 was to be sold to the Essar Group of Companies. The dispute arose with reference to the supply made by the Vikas Nigam to Essar Group of Companies the Vikas Nigam did not generate 515 MW electricity and did not supply 300 MW to the Board. As per the Board the Vikas Nigam was to allocate whatever electricity it generated in the ratio 300 MW : 215 MW. It is apparent that the dispute was between a generating licensee and a distributing licensee, the captive purchaser being a necessary party. The decision would not be an authority if the dispute is between a generating licensee and a trading licensee.

3. The learned Single Judge had to consider the provisions of the Electricity Act, 2003 concerning a dispute between an electricity generating company and a company having a license to trade in electricity, with further fact that the generating company is in one State and the company purchasing the power is in another State. The learned Single Judge had to consider the applicability of Section 86 in twin context. Whether the State Commission had the power to adjudicate a dispute between a power generating company in one State and a trader of power in the other State. With reference to the Central Commission, the learned Single Judge had to take note of and decide, with reference to Section 79 of the Indian Electricity Act, 2003, whether the Central Commission have the power to adjudicate a dispute between a generating company and a trading company. The learned Single Judge had to keep in mind that the power of the Central Commission was limited to clause (a) to (k) of sub-Section 1 thereof. Under which clause, if at all, the dispute between the parties was within the domain of the Central Commission had to be discussed.

4. Since the learned Single Judge has not considered the relevant issues which arose and has not adverted to the legal provisions, we are constrained to set aside the impugned order and restore the suit by making it clear that if the issue of jurisdiction of a civil court is raised the same shall be decided by the learned Single Judge by noting the contentions, the law applicable and precedents if any."

23. Thus, as per the scope of the remand, learned Single Judge shall consider the following:



- (a) Applicability of Section 86 with regard to the dispute between a generating company and a trading licensee and to the dispute between the generating company in one State and the company purchasing electricity is located in another State;
- (b) The power of the Central Commission under Section 79 of the Act to adjudicate the disputes between a generating company and trading licensee, and under which clause (from clauses from (a) to (k) of sub-section (1) of Section 79 of the Act), if at all, the dispute shall fall under the domain of the Central Commission.

24. It is noted that the learned counsel for the Petitioner JPL sought a clarification from the Hon'ble Single Judge as to whether the pendency of the suit will prevent other authorities to exercise their jurisdiction with regard to the dispute between the parties. Hon'ble judge has clarified in the order dated 21.3.2017 as under:

ORDER
21.3.2017

I.A. No. 5287/2016 and I.A. No. 2487/2017 (O 6 R 17)

Learned counsel for the plaintiff seeks time to file the rejoinder. Let the rejoinder be filed within four weeks.

Learned counsel for the defendant has submitted that the other authorities, before whom the different matters are pending, are not taking any steps simply because this case is pending. It is clarified that there is no stay in this case and pendency of this suit does not bar the other authorities to act within its jurisdiction.”

25. In the light of the above clarification, pendency of the Civil Suit before the Hon'ble Single Judge of the Delhi High Court will not be a bar under Section 10 of the CPC for the Commission to proceed in the matter within its jurisdiction. The present petition has been filed under Section 19, and not under Section 79 of the



Act which is under consideration of the Hon'ble Single Judge. It is pertinent to mention that even the Respondent GEPL does not deny the jurisdiction of this Commission under Section 19 of the Act for revocation of licence for inter-State trading in electricity for contravention of provisions of the Trading Licence Regulations and terms and conditions of licence. In the written submission, the Respondent has made the following submissions.

“This Hon'ble Commission has power to decide whether to cancel the license or not, however, for deciding the same, this Hon'ble Commission does not have power to go into the commercial dispute/issues between a generator and a trading licensee which is outside the ambit of Section 79. Merely because power of revocation of license is vested in this Hon'ble Commission, the same does not vest jurisdiction in this Hon'ble Commission for either going into/adjudicating or giving findings in a dispute between a generator and a trading licensee.”

As per the submissions of the Respondent GEPL, for coming to the view that the Respondent has contravened the provisions of the Trading Licence Regulations, the commercial disputes between the Petitioner and the Respondent need to be adjudicated under Section 79 of the Act which is beyond the jurisdiction of the Commission.

26. In view of the above submissions of the Respondent GEPL, the question arises whether adjudication of a dispute between the parties is a condition precedent for exercise of the jurisdiction under Section 19 of the Act. Therefore, for determination of this question, we have to consider the provisions of the Act with regard to the licence for inter-State trading in electricity. According to Section 2(71) of the Act, trading means purchase of electricity for sale thereof. Clause (e) of sub-Section (1) of Section 79 of the Act has vests function in the Central Commission to issue licences to persons to function as electricity trader with respect to their inter-State operations. Section 12 of the Act provides that no person shall undertake



trading in electricity unless he is allowed to do so by a licence issued under Section 14 of the Act. Section 14 of the Act provides that the appropriate Commission may on an application made to it under Section 15 of the Act grant any person, licence to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence. Section 15 of the Act provides for the procedure for making application for licence. Section 16 of the Act provides that the appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence. Section 18 deals with the circumstances and procedure for amendment of the licence. Section 19 of the Act deals with revocation of licence. Section 52(2) of the Act provides that “every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission”. Section 52 of the Act provides as under:

“52. (1) Without prejudice to the provisions contained in clause (c) of section 12, the Appropriate Commission may specify the technical requirement, capital adequacy requirement and credit worthiness for being an electricity trader.

(2) Every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission.”

The Commission has specified the Trading Licence Regulations which contain the terms and conditions for grant of inter-State trading licence, networth requirement and credit worthiness for grant of trading licence, the obligations of licensee, revocation of licence, offences and punishment to the licensee etc.

27. We are concerned with the exercise of the power of the Commission under Section 19 of the Act in the facts of the present case. Section 19 of the Act deals with the circumstances and procedure for revocation of licence. Regulation 14 of the

Trading Licence Regulations contains analogous provisions. Section 19 of the Act is extracted as under:

“19. (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely:-

- (a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;
- (b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;
- (c) where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor –
 - (i) to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence; or
 - (ii) to make the deposit or furnish the security, or pay the fees or other charges required by his licence;
- (d) where in the opinion of the Appropriate Commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.

(3) No licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months' notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.

(4) The Appropriate Commission may, instead of revoking a licence under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon and be observed by the licensee and shall be of like force and effect as if they were contained in the licence.

(5) Where the Commission revokes a licence under this section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.



(6) Where an Appropriate Commission has given notice for revocation of licence under sub-section (5), without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under this Act, the licensee may, after prior approval of that Commission, sell his utility to any person who is found eligible by that Commission for grant of licence.”

28. Section 19 of the Act covers the following circumstances for revocation of licence:

- (a) Wilful and prolonged default on the part of licensee in doing anything required of him or under this Act or the rules or regulations made thereunder.
- (b) Breach of any of the terms or conditions of licence which is expressly declared to render the licence liable for revocation.
- (c) Failure to establish to the satisfaction of the Commission that the licensee is in a position to fully or efficiently discharge the duties and obligations imposed under the licence.
- (d) Financial conditions of the licensee which prevents the licensee to fully or efficiently discharge its duties and obligations imposed on him by his licence.

If the Commission after making an enquiry is satisfied that any of the above circumstances exists and public interest so requires, licence can be revoked. Before revocation of licence, the Commission has to give a notice of three months to the licensee stating the grounds on which it is proposed to revoke the licence and after considering the cause shown by the licensee. Thus, satisfaction of the Commission after making an enquiry about the existence of any of the circumstances for revocation and further satisfaction that public interest requires revocation in such circumstances are the relevant considerations for exercise of power under Section 19 of the Act. Respondent GEPL has submitted that the dispute between JPL and



GEPL needs to be first adjudicated and decided in favour of JPL and the allegations of fraud first need to be established in a criminal court before the Commission exercises its power under Section 19 of the Act. We are unable to agree with the Respondent GEPL. The language of Section 19 is clear and unambiguous that only the satisfaction of the Commission after making an enquiry about the existence of any of the circumstances for revocation of licence mentioned in clauses (a) to (d) of Section 19 (1) and the requirement of public interest are necessary conditions for exercise of power under Section 19 of the Act. In other words, adjudication of the dispute between the Petitioner and the Respondent is not a pre-condition for initiation of action under Section 19 of the Act.

29. Next we proceed to examine whether the Petitioner has made out the case under Section 19 of the Act against the Respondent. Section 19(1)(a) of the Act provides that “where the licensee, in the opinion of the Appropriate Commission, makes willful and prolonged default in doing anything required of him by or under this Act or the Rules or regulations made thereunder.” Section 52(2) of the Act provides that “every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission”. Regulation 7 of the Trading Licence Regulations specifies the following obligations for inter-State trading licensees:

“7. Obligations of the Licensee: The licensee shall be subject to the following obligations; namely:-

- (a) The licensee shall comply with the requirements of laws in force and, in particular, the Act, the Rules and the Regulations, Grid Code, orders and directions issued from time to time by the Commission and any of the State Electricity Regulatory Commissions in accordance with law.
- (b) The licensee shall not exceed the volume of trading authorized under the licence, but may, in exceptional circumstances, undertake trading in



electricity up to the maximum of 120 per cent of the volume of trade authorized under the licence granted to him:

Provided that the licensee, on exceeding the volume of trading authorized in a year under the licence granted to him shall pay licence fee applicable to the higher category for that particular year:

Provided further that the licensee may with the prior approval of the Commission and on such terms and conditions as the Commission may decide, exceed the specified limit of 120% in a year.

- (c) The licensee shall not charge any amount exceeding the trading margin for the inter-State trading in electricity, fixed by the Commission from time to time.
- (d) The licensee shall continue to be governed by the qualifications or disqualifications specified in these regulations for making an application for licence throughout the period of licence.
- (e) The licensee shall establish adequate communication facilities like telephone, fax, computer, internet facilities, before undertaking trading.
- (f) The licensee may coordinate with Regional Power Committees, the Central Transmission Utility, State Transmission Utilities, the Regional Load Despatch Centers, and the State Load Despatch Centers with regard to his trading- related activities, to the extent authorized by the concerned buyer and seller.
- (g) The licensee shall render all assistance to any person authorised by the Commission to carry out his duties relating to the licence.
- (h) The licensee shall carry out trading in accordance with the agreed terms and conditions, and may take such safeguards as he may consider necessary with regard to payment security mechanism from the buyers, but shall always ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee.
- (i) The licensee shall ensure that appropriate agreement for purchase and sale of electricity are entered into by him with the sellers and the buyers prior to scheduling a transaction, and that the agreement shall specify the following, namely-
 - (i) the boundaries, that is to say, upper and lower MW limits of electricity to be purchased or sold,
 - (ii) modalities for scheduling,
 - (iii) persons authorized to specify the schedule, or to modify it after it has been intimated to the Regional Load Despatch Centre or the State Load Despatch Centre,



- (iv) whether the buyer or the seller can unilaterally advise modification of the schedule, or whether the modification can only be advised jointly by the buyer and the seller,
 - (v) the liabilities of the parties (seller, buyer and licensee) in case the scheduled quantum (MW) and time of scheduling differs from the agreed terms, or in case of modification in schedule, and in the latter case, the party that will bear non-refundable part of short-term open access charges.
- (j) The licensee shall ensure that there is no discrepancy or scope for dispute in the scheduling advised to the Regional Load Despatch Centre and in case of any discrepancy or ambiguity in the scheduling advice, the decision of the Regional Load Despatch Centre on the acceptance or otherwise of such advice shall be binding.
 - (k) The licensee shall ensure that the buyer and the seller are, either grid connected entities or represent such entities, with special energy meters on their periphery and that the mechanism for Unscheduled Interchange accounting by the appropriate authority is in place.
 - (l) The licensee shall not purchase electricity from the entities and the associates of such entities, defaulting in payment of Unscheduled Interchange charges, transmission charges, reactive energy charges, congestion charge and fee and charges for National Load Despatch Centre or Regional load Despatch Centre or the Unified Load Despatch and Communication Scheme or any other payment levied by the Commission or any of the State Commissions under the provisions of the Act or any regulation made thereunder, when so advised by the Commission.
 - (m) The licensee shall regularly pay the licence fee specified by the Commission from time to time.
 - (n) The licensee shall not omit or neglect to undertake trading activity.
 - (o) The licensee shall not enter into any agreement for purchase or sale of electricity that may lead to abuse of his dominant position or enter into a combination which causes or is likely to cause an adverse effect on competition in electricity industry.
 - (p) The licensee shall maintain up-to-date record of all the Trading transactions undertaken by him, separately for bilateral transactions, inter- State as well as intra-State, and those through the power exchange.
 - (q) The licensee shall make an appropriate application before the Commission for prior approval of the Commission whenever so required, in accordance with the Conduct of Business Regulations.
 - (r) The licensee shall, subject to settlement of commercial terms in accordance with law, not omit sale of electricity to a consumer allowed open access by the concerned State Commission."



30. Section 52 (2) read with Regulation 7 of the Trading Licence Regulations cast a statutory obligation on the person issued with a trading licence by this Commission to discharge such duties in relation to supply and trading of electricity as may be specified by the Commission. The Petitioner in Ground J has submitted that the Respondent GEPL has violated the obligations of the licensee specified in Regulation 7(a), (c), (d) and (h) of the Trading Licence Regulations. Regulation 7(a) provides that a licensee shall abide by the Act, Rules, and applicable regulations of this Commission. Regulation 7(c) provides that the licensee shall not charge trading margin more than that is specified by the Commission. Regulation 7(d) provides that the licensee shall continue to be governed by the qualifications and disqualifications specified in the Trading Licence Regulations throughout the life of the licence. Regulation 7(h) provides that the licensee is required to (i) carry out trading in accordance with the agreed terms and conditions; (ii) take such safeguards as he may consider necessary with regard to payment security mechanism with the buyers; (iii) always ensure payment to the seller for the purchase of agreed quantum of electricity either through letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee. Thus, a trading licensee is bound to always ensure payment to the Seller for the purchase of the agreed quantum of electricity through appropriate instrument or as may be mutually agreed between the parties.

31. The Commission in exercise of its power under the Act and the Trading Licence Regulations granted trading licence in Category A to the Respondent GEPL vide Licence No. 41/Trading/CERC dated 28.11.2008. Trading licence was upgraded from Category 'A' to Category 'F' vide order dated 22.12.2008.



Consequent to amendment in the Trading Licence Regulations, Category 'F' was re-categorised as Category 'I'.

32. The Petitioner is a generating company and has set up a 3400 MW coal based thermal power plant at Tamnar, District Raigarh in the State of Chhattisgarh. The Petitioner entered into agreements with GEPL through binding Letter of Intents (LoI) for supply of power. The LoIs dated 17.9.2014, 30.5.2015 and 18.5.2015 were for supply of power for the period from 1.10.2014 to 31.3.2015, 1.4.2015 to 30.9.2015 and 1.9.2015 to 31.3.2016 respectively. The LoIs contain *inter-alia* terms and conditions for supply of power with regard to the payment of bills. Clause 8 of the LoIs provide that within 15 days of submission of bills by the Petitioner, the Respondent is obligated to pay the bill amount to the Petitioner. As per clause 10 of the LoIs, late payment surcharge @1.25% per month is leviable after 30th day from the receipt of bill in case of LoI dated 17.9.2014 and after 16th day from the receipt bill in respect of LoI dated 30.3.2015 and 17.8.2015. Further, as per clause 18 of the LoI, GEPL is required to open Letter of Credit/Bank Guarantee as payment security mechanism in favour of the Petitioner.

33. The Petitioner supplied power for the period from 1.10.2014 to 31.3.2015 in terms of the LoI dated 17.9.2014 and raised monthly bills upon the Respondent for a total amount of ₹44.70 crore. The Respondent made a payment of ₹20 crore and vide its letter dated 27.3.2015 furnished six post-dated cheques towards the payment of outstanding dues and payment security mechanism. The last two post-dated cheques were to be used only in case of non-provision of adequate bank guarantee by the Respondent. Subsequently, the Respondent furnished two bank guarantees amounting to ₹12 crore valid upto 31.10.2015 in favour of the Petitioner



in place of two post-dated cheques. The Respondent vide its letter dated 16.4.2015 furnished five post-dated cheques for ₹13,80,42,556/- towards balance outstanding dues for the power supplied pursuant to Lol dated 17.9.2014. The Petitioner presented two cheques dated 28.9.2015 which were returned with the remarks "payment stopped by drawer". Thereafter, the Petitioner encashed the bank guarantee of ₹12 crore on 29.9.2015. On 28.10.2015, the Petitioner presented two cheques dated 28.10.2015 for encashment which were returned on 28.10.2015 with the remarks "cheques stopped by drawer". Thus, for the supply of power from 1.10.2014 to 31.3.2015, partial payment of ₹20 crore was made as against the bill of ₹44.70 crore and at the fag end of the supply period, six post-dated cheques and ₹12 crore bank guarantee in lieu of two post-dated cheques towards the outstanding dues were provided. Thereafter, fresh post-dated cheques were provided after the expiry of the supply period. However, the post-dated cheques could not be encashed as the payments were stopped by the Respondent. The Petitioner could encash only ₹12 crore of bank guarantee. In other words, despite the agreement in the Lol dated 17.9.2014 that the Respondent shall ensure payment security through Letter of Credit or Bank Guarantee, the Respondent gave bank guarantee only for ₹12 crore and did not furnish Letter of Credit. Payment for supply of power under the Lol dated 17.9.2014 are still outstanding.

34. Though the Petitioner and the Respondent had agreed through the Lol dated 30.3.2015 for supply of power for the period from 1.4.2015 to 30.9.2015. However, supply of power was made from 1.4.2015 till 30.6.2015. The Respondent started negotiating the rate of tariff and vide its letter dated 22.6.2015 expressed its inability to execute the agreement in terms of the Lol dated 30.3.2015. Subsequently, a



fresh Lol dated 18.8.2015 was issued for supply of power from 1.9.2015 to 31.3.2016. Though the Respondent accepted the terms and conditions of the said Lol vide its e-mail dated 18.8.2015, it sought amendment of the disbursement and effective period of the Lol to 1.10.2015 to 30.4.2016 on account of non-availability of NoC from MSEDCL. The Petitioner vide its letter dated 9.9.2015 withdrew the Lol dated 18.8.2015 and asked the Respondent to make payment of the outstanding dues for the past supplies made by the Petitioner.

35. According to the Petitioner, GEPL has made willful and prolonged default on in compliance of provisions of Regulation 7(h) of the Trading Licence Regulations as it has not paid ₹24.70 crore and delayed payment of ₹10.05 crore for the power supplied under LOIs dated 17.4.2014 and 30.3.2015. The Respondent in its written submission has stated that all claims of the Petitioner have been settled.

36. We have noticed that the Respondent has not paid the outstanding dues of the Petitioner for the supply of power under Lols dated 17.4.2014 and 30.5.2015. The Respondent had given post-dated cheques for payment of the outstanding dues which could not be encashed by the Petitioner on account of the instructions of GEPL for stopping payments against these cheques. Without prejudice to the actions pending before the Metropolitan Magistrate and High Court of Delhi for dishonor of cheques, we are of the view that failure to release payments against the post-dated cheques for outstanding dues amounts to prolonged and willful defaults on the part of GEPL to ensure timely payment to the Petitioner for supply of power which GEPL as a trading licensee is required to comply with in terms of Regulation 7(h) of the Trading Licence Regulations. Therefore, it satisfies the conditions of Section 19 (1) (a) of the Act. Further, the trading in electricity is a regulated activity



under the Act as trading is envisaged to promote competition and thereby serve public interest. If the trading licensees are allowed to flout the terms and conditions of the agreements for purchase and sale of electricity in the course of trading, there will be chaos in the market, shake the confidence of the generating companies and distribution licensees/consumers and thereby will affect competition which is against public interest. Therefore, public interest demands that such practices are strongly discouraged and the licensees indulging in such practices are dealt with strictly in accordance with law. We are of the view that a case against GEPL under Section 19 (1) (a) of the Act for revocation of licence has been made out.

37. According to sub-section (3) of Section 19 of the Act, the Commission is required to give three months' notice to the licensee stating the grounds for revocation of licence and take a decision after considering the cause shown by the licensee. Accordingly, notice is hereby given to GEPL to show cause as to why its licence for inter-State trading of electricity should not be revoked for its failure to pay the outstanding dues of JPL for the power supplied in terms of Lols dated 17.4.2014 and 30.5.2015 and late payment surcharge thereon which is in contravention of the Regulation 7(h) of the Trading Licence Regulations. The reply to the show cause notice shall be filed by GEPL by 23.3.2018. Section 19(4) of the Act provides that the Commission may instead of revoking the licence under sub-section (1) of Section 19, permit it to remain in force subject to such further terms and conditions it thinks fit to impose and such terms and conditions shall be binding on the licensee. In exercise of power under Section 19(4), we direct that if GEPL makes the full and final payment of the outstanding dues and late payment surcharge to JPL in terms of the Lols dated 17.4.2014 and 30.5.2015 on or before 23.3.2018 and



further submits an undertaking to comply with the terms and conditions of the agreements for purchase and sale of power and not make any default in payment in future, the Commission will take a view with regard to the proposed revocation of licence.

38. The matter shall be listed for hearing GEPL on show cause notice on 12.4.2018.

sd/-
(Dr. M. K Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

