

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 64/MP/2013

Coram:

Shri Gireesh B Pradhan, Chairperson

Shri M. Deena Dayalan, Member

Shri A.K. Singhal, Member

Date of Hearing: 03.7.2014

Date of Order : 29.1.2015

In the matter of

Petition under Section 79(1)(f) read with 79(a), (b) and (c) of the Electricity Act, 2003 in respect of Power Supply related disputed issues raised by Jharkhand State Electricity Board.

And

In the matter of

Damodar Valley Corporation
DVC Tower, VIP Road,
Kolkata-700 054

.....**Petitioner**

Vs

Jharkhand State Electricity Board
Engineering Building, HEC,
Dhruwa, Ranchi-4

.....**Respondent**

Parties Present:

1. Ms. Swagatika Sahoo, Advocate, DVC
2. Ms. Anushree Bardhan, Advocate, DVC
3. Shri R.B. Sharma, Advocate, JSEB
4. Shri Himanshu Shekhar, Advocate, JSEB



ORDER

In the present petition filed under clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003, the petitioner has made the following prayers, namely:

- a. *Adjudicate on the disputes and differences mentioned herein above (in the Petition) .*
- b. *Issue directive to JSEB for liquidation of outstanding dues of which principal dues is (Rs. 3621.84 Crores and DPS is Rs. 2172.87 Crores), as claimed by DVC till the end of February 2013, immediately so that the financial health of DVC improves.*
- c. *Issue directives to JSEB to restrain from claiming Line Loss prior to the year of claim preferred to DVC.*
- d. *Issue directives to JSEB to restrain from claiming Free Hydel Power prior to the year 2006-07, subject to acceptance by the Commission, since for the past period up to 2006-07 DVC already allowed a 15% rebate to JSEB on its energy charge and demand charge.*
- e. *Issue directives to DVC & JSEB as the Commission considers most appropriate in respect of other disputed issues, raised by JSEB viz. TISCO Differential, Rebate on Tariff, Delay Payment Surcharge, Incentive, Settlement of Differential Tariff.*
- f. *To kindly settle the disputes and resolve the long pending issues once for all so that tariff can be regularized in the operating area of DVC.*
- g. *Pass such order or orders as the Commission may deem just and proper in the circumstances of the case.”*

2. The petitioner, a statutory body constituted under the provisions of Damodar Valley Corporation Act, 1948 (**DVC Act**) is a generating company and is supplying power to the States of West Bengal and Jharkhand through West Bengal State Electricity Distribution Company Ltd (**WBSEDCL**), successor of *erstwhile West Bengal State Electricity Board* and the respondent, Jharkhand State Electricity Board (**JSEB**) respectively. The petitioner is also deemed to be a distribution licensee for supply of

electricity to the consumers within Damodar Valley area, called the Command Area, which extends to parts of the States of West Bengal and Jharkhand. However, through a special arrangement and with the consent of the State Government, the petitioner had been supplying electricity to Tata Iron and Steel Company (**TISCO**) at Jamshedpur, Jharkhand State, falling outside its Command Area. The tariff for bulk sale of electricity by the petitioner to WBSEDCL and JSEB is being regulated by the Commission since 1.4.2006. Prior thereto, the tariff for supply of electricity was determined by the petitioner itself under Section 20 of the DVC Act.

3. The petitioner has alleged that a total amount of ₹5794.72 crore comprising of principal amount of ₹3621.85 crore and Delayed Payment Surcharge (**DPS**) of ₹2172.87 crore as on 28.2.2013 was outstanding and payable by, JSEB. The petitioner has, therefore, sought a direction to JSEB for liquidation of the outstanding dues.

4. We now notice areas of dispute or differences narrated by the petitioner.

Outstanding Dues

5. The petitioner under this head has filed a claim of ₹2353.26 crore which includes principal amount of ₹1417.74 crore reconciled up to 31.3.2012 and ₹935.52 crore as DPS, recoverable on dues outstanding for more than 90 days in accordance with clause 17 of the Securitisation Scheme of the Central Government (**the Securitization Scheme**). Meanwhile, Government of Jharkhand is stated to have paid ₹200 crore against these dues. The petitioner has stated that it is pursuing JSEB for liquidation of old outstanding dues.

TISCO Differential

6. It has been stated that with the approval of the State Government of Bihar the petitioner extended its transmission system outside its Command Area to Jamshedpur and had been supplying power to TISCO since 1.6.1954 under a bilateral agreement in force up to 31.3.1991 at tariff determined by the petitioner. The petitioner has stated that for supply of power by the petitioner to TISCO beyond 31.3.1991, at the insistence of the State Government of Bihar, a tripartite agreement dated 23.12.1992 was executed between the State Government of Bihar, TISCO and the petitioner. According to the tripartite agreement, supply of power to TISCO was 'deemed supply' by Bihar State Electricity Board (**BSEB**) at BSEB tariff, or the tariff determined by the petitioner, whichever was higher. Under the tripartite agreement it was agreed that the excess (differential) amount over and above the petitioner's own tariff collected by it from TISCO was adjusted towards current outstanding dues of BSEB payable to the petitioner and the amount left with the petitioner after adjusting such current energy charges payable by BSEB to the petitioner was passed on to BSEB. The arrangement continued up to 31.3.2001.

7. The petitioner has submitted that after creation of the State of Jharkhand, the State Government was approached for permission for supplying power to TISCO for a further period of 5 years beyond 31.3.2001. However, thereafter, the petitioner vide letter dated 20.3.2001 expressed its reluctance to supply power to TISCO as deemed supply of JSEB (successor of BSEB) in accordance with tripartite agreement dated 23.12.1992. Accordingly, in its letter dated 28.3.2001 addressed to the State

Government, the petitioner stated that it would be charging from TISCO the tariff fixed under the DVC Act and in case TISCO agreed to pay any amount in addition to the tariff payable under the DVC Act, the additional amount should be directly recovered by JSEB from TISCO without any liability of the petitioner on that count.

8. The petitioner has stated that JSEB and the State Government have been insisting that the petitioner should collect the additional amount from TISCO and on this plea, JSEB is unilaterally making huge reduction from the power bills of the petitioner.

12% Free Hydel Power

9. In accordance with Ministry of Power letter dated 1.11.1990, 12% free hydel power is to be supplied to the home State for the projects commissioned after 7.9.1990. The letter is stated to have been issued in terms of Gadgil formula. The petitioner has stated that in 1992 it established a hydel power project at Panchet within its Command Area located in the State of Jharkhand. The petitioner has stated that it has been supplying power to the State of Jharkhand since April 2001. The petitioner has alleged that JSEB unilaterally deducted an amount of ₹19.32 crore from its dues as a claim on account of 12% free hydel power. According to the petitioner, no amount on this account is payable to JSEB since its hydel power project is not covered under the Gadgil formula as opined by Secretary, Ministry of Power at the meeting held on 3.2.2011. In support of its plea, the petitioner has also relied upon the order of the one-Member bench of the Commission dated 5.5.2006 in Petition No. 66/2005 earlier filed by the petitioner for determination of tariff for the period 2006-09.

Rebate on Tariff

10. The petitioner has stated that JSEB is claiming 15% rebate on power bills (Demand Charge plus Energy Charge) which was allowed till the tariff was determined by the petitioner under the DVC Act, that is, upto 31.3.2006. According to the petitioner, rebate of 15% is no more applicable from 1.4.2006 since the tariff for power supplied from that date is regulated under the orders of the Commission.

Delayed Payment Surcharge

11. The petitioner has pointed out that in terms of the tripartite agreement executed under the Securitization Scheme, the rate of DPS is 15% per annum, compounded quarterly. It has been stated that the due date for payment of bills has not been specifically mentioned in the tripartite agreement which only states that the due date should be in terms of PPA in the absence of which the due date would be 60 days. The petitioner has submitted that JSEB is insisting on considering due date as 60 days though due date in terms of PPA is 30 days.

Incentive

12. The next grievance of the petitioner arises out of JSEB's claim for incentive on issuance of Bonds under the Securitization scheme. The claim under this head is stated to be for ₹195.58 crore. The petitioner has submitted that it did not allow incentive as JSEB had failed to comply with the provisions of the Securitization Scheme. The petitioner has listed a number of defaults committed by JSEB, which, according to the petitioner, disentitles JSEB to claim incentive. The principal defaults listed by the petitioner are non-opening of Letter of Credit for adequate amount and non-payment of

dues in time. The petitioner has submitted that these defaults were communicated to JSEB from time to time, emphasizing ineligibility of JSEB to claim incentive.

Settlement of Differential Tariff

13. The dispute under this head relates to excess amount of tariff for the period April 2006 to April 2010. As stated above, the tariff for the period up to 31.3.2006 was determined by the petitioner under Section 20 of the DVC Act and thereafter by the Commission. However, the tariff determined by the petitioner was provisionally continuing till April 2010. The tariff determined by the petitioner exceeded the tariff approved by the Commission. The petitioner has stated that JSEB and the petitioner have jointly computed the differential amount which comes to ₹857.47 crore. The liability to pay the excess (differential) amount is disputed by JSEB. The petitioner has pointed out that 95% of the disputed amount is payable by JSEB in terms of the Clause No. 18 of the Securitisation Scheme which JSEB has not complied with. It has been stated that a number of appeals relating to determination of tariff of thermal and hydro projects for the period 1.4.2006 to 31.3.2009 are pending before the Hon'ble Supreme Court against the tariff determined by the Commission

Line Losses

14. The last grievance of the petitioner projected in the petition arises out of JSEB's claim for line losses. The petitioner has stated that supply of power to JSEB is at 33 off-take points as mutually agreed to between them. Out of 33 off-take points of supply, tariff meters for 15 off-take points of supply were located at the petitioner's end because of the infrastructure problems of JSEB. The petitioner has submitted that JSEB has claimed line losses of these 15 off-take points of supply until meters are shifted to

JSEB's location. The petitioner has stated that 8 meters have already been shifted at JSEB end. The petitioner has averred that line losses have been calculated in terms of the formula discussed at and accepted by ERPC forum. The petitioner has further stated that the line losses in respect of 7 off-take point of supply have been taken care of in the tariff petition filed by it before Jharkhand State Electricity Regulatory Commission (**JSERC**) and the line losses if allowed by JSERC will be considered as T&D losses of its system and the line losses amount will be passed on to JSEB, even for the entire period for which regulatory tariff is applicable.

Respondent's Reply

15. In its counter-reply dated 13.7.2013 filed on 15.7.2013, JSEB raised two preliminary objections on maintainability of the petition, namely, jurisdiction of the Commission to adjudicate the disputes raised in the petition and bar of limitation. JSEB has not filed reply on merits of the petitioner's claims. The Commission in its order dated 11.9.2013 overruled both the preliminary objections and held that the petition was maintainable.

Petitioner's affidavit dated 7.3.2014

16. In the affidavit dated 7.3.2014 filed by the petitioner it has been stated that the parties continued the process to reconcile the amounts under dispute and a meeting was held on 26.10.2013 to work out the principal amount outstanding, the disputed and undisputed amounts up to June 2013. It has been stated that the total principal outstanding amount up to June 2013 was ₹3380 crore, out of which the amount disputed was ₹791.02 crore, leaving the undisputed amount of ₹2589.45 crore. The

petitioner along with the affidavit has filed the minutes of the meeting held on 26.10.2013 which contains the following details:

(₹ in crore)		
SI No.	Particulars	Amount
1	Power bills raised	10529.51
2	Payments received by the petitioner	7149.05
3	Principal amount outstanding	3380.46
4	Disputed Amount	
4.1	Tariff disputes from April 2006 to April 2010	163.515
4.2	Line losses from September 2001 to June 2013	51.85
4.3	12% free hydel power to home State	23.89
4.4	Incentive for issuance of bonds under Securitisation scheme of Govt. of India	195.58
4.5	TISCO Differential Amount	356.18
4.6	Total Disputed Amount	791.015
10	Undisputed Principal Amount	2589.45

17. In the said affidavit dated 7.3.2014, the petitioner has further placed on record the details of the outstanding amounts from July, 2013 to January, 2014 as per the following tabulated statement:

(₹ in crore)				
Billed Month	Billed Amount	Collection Month	Collection Amount	Amount Due
July 2013	146.38	August 2013	0.00	146.38
August 2013	138.37	September, 2013	139.82	(-) 1.45
September 2013	140.92	October, 2013	0.00	140.92
October 2013	135.85	November, 2013	78.41	57.44
November 2013	145.96	November, 2013	217.93	(-) 71.97
December 2013	150.74	January, 2014	0.61	150.13
January 2014	157.27	February, 2014	0.00	157.27
Total	1051.49		436.77	578.72

JSEB's Reply to Affidavit dated 7.3.2014

18. JSEB has filed its reply vide affidavit dated 5.6.2014 to the petitioner's affidavit dated 7.3.2014. JSEB has submitted that the total power bill of the petitioner up to June 2013 was ₹10528.83 crore as against ₹10529.51 crore noted during the reconciliation

meeting on 26.10.2013. JSEB has submitted that the amount of ₹200 crore received by the petitioner from the Government of Jharkhand should be adjusted against arrears in accordance with the Clause 11.8 of JSERC Electricity Supply Code, 2005 (**the Supply Code**) according to which the amount paid by the consumer shall first be adjusted against the arrears, then against DPS and the lastly against the current monthly charges, though the petitioner has adjusted the said amount against DPS. JSEB has pointed out that the petitioner in its affidavit dated 7.3.2014 has not factored the effect of 15% rebate as was being given earlier. JSEB has argued that 15 % rebate on the billed amount of Energy Charge and Demand Charge is to be allowed. JSEB has further urged that the petitioner's affidavit has not taken notice of DPS of ₹1628.56 crore and odd for the period 1.10.2001 to 31. 3.2013 which was provisionally reconciled in the meeting held on 10.01.2014. According to JSEB, the lines losses for the period up to June 2013 work out to ₹53.33 crore and the compensation payable on account of 12% Free Power adds up to ₹25.79 crore up to March 2013. JSEB has stated that the disputed amount works out to ₹794.59 crore after taking into account the increased line losses and Free Power. As regards the petitioner's claim for an amount of ₹578.72 crore for the period July,2013 to January, 2014 it has been stated that the claim is inconclusive in the absence of reconciliation. JSEB has prayed that the amount claimed by the petitioner may be allowed to be paid only after reconciliation of entire dispute.

Petitioner's affidavit dated 25.6.2014

19. The petitioner vide affidavit dated 25.6.2014 has submitted that Delayed Payment Surcharge (DPS) amount as reconciled as on 10.1.2014 is ₹1628.56 crore for the period from 1.10.2001 to 31.3.2013. Further, the petitioner has submitted that the disputed

amount is ₹799.26 crore instead of ₹791.02 crore, due to change in line losses and free hydel power amount and after inclusion of ₹4.66 crore bill for unauthorized tapping at Govindpur Sub-station. The details of billed amount and payment made, disputed and undisputed amount as submitted by the petitioner vide affidavit dated 25.6.2014 are follows:

(₹ in crore)		
S. No.	Particulars	Amount
1	Power bills raised	10533.49
2	Payments received by the petitioner	7149.05
3	Principal Amount Outstanding	3384.44
4.	Disputed Amount	
4.1	Tariff disputes from April 2006 to April 2010	163.515
4.2	Line loss from September 2001 to June 2013	53.33
4.3	12% free hydel power to the home state	25.79
4.4	Incentive for issuance of bonds under Securitisation scheme of Govt. of India	195.58
4.5	TISCO differential/cross subsidy up to June, 13	356.18
4.5	Un-authorized tapping at Govindpur sub-station	4.66
4.6	Total Disputed Amount	799.255
5	Principal Undisputed Amount	2585.185

Hearing dated 3.7.2014

20. The petitioner had filed its rejoinder to JSEB's affidavit dated 7.3.2014. During the last hearing of the petition on 3.7.2014, learned counsel for the petitioner submitted that as per reconciliation of outstanding amount carried out jointly by the petitioner and JSEB, the undisputed amount stood at ₹4213.745 crore (up to June 2013) including ₹1628.56 crore towards DPS as reconciled at the meeting held on 10.1.2014 and placed on record vide affidavit dated 25.6.2014. Learned counsel for JSEB requested for one week's time to file further reply, if considered necessary, to the petitioner's rejoinder. The Commission allowed time up to 15.7.2014 to enable JSEB to file its response. It was clarified that if the response was not filed by due date, the Commission

would issue order without taking into consideration the submission made after the due date. JSEB has not filed its further response to the petitioner's rejoinder. The petitioner vide its affidavit dated 14.1.2015 has placed on record the additional facts relating to the matter. Since the petitioner has not filed its submission within time, affidavit dated 14.1.2015 is not being considered in this order.

Decision

21. We have heard learned counsel for the parties. We have carefully considered the documents available on record and the submissions of the learned counsel for the petitioner as well as JSEB. The analysis and decisions have been discussed in subsequent paragraphs.

Outstanding Dues

22. In accordance with the affidavit dated 25.6.2014 filed by the petitioner after the reconciliation meeting held on 10.1.2014, an amount of ₹2585.185 crore was payable by JSEB up to June 2013 as principal. In the said affidavit dated 25.6.2014 it has also been stated that in the meeting of 10.1.2014 DPS amount payable by JSEB was also reconciled and it worked out to ₹1628.56 crore for the period up to 31.3.2013. This was reiterated by learned counsel for the petitioner at the hearing on 3.7.2014. JSEB has not contested the correctness of either of the above amounts indicated by the petitioner in the said affidavit dated 25.6.2014. In fact, in the affidavit dated 5.6.2014 JSEB has admitted that DPS was ₹1628.56 crore, though stating that it was provisionally reconciled. Therefore, the petitioner is entitled to immediately recover the total undisputed amount of ₹4213.745 crore (₹2585.185 + ₹1628.56). The amount payable

by JSEB for the period July, 2013 to January, 2014 has not been reconciled. The petitioner has indicated a sum of ₹578.72 crore for this period. It is directed that the petitioner and JSEB shall reconcile the dues on priority. However, pending such reconciliation the claimed amount of ₹578.72 crore shall be paid provisionally, subject to adjustment based on reconciliation.

TISCO Differential

23. Under the tripartite agreement dated 23.12.1992, power was supplied to TISCO by the petitioner out of its own generation but was treated as 'deemed supply' of BSEB. TISCO paid the tariff fixed by the petitioner under Section 20 of the DVC Act and also the additional amount being the difference between the BSEB tariff and the petitioner's tariff. The excess amount was adjusted by the petitioner against the dues payable by BSEB to the petitioner or was passed on to BSEB. The arrangement continued till March 2001. Thereafter, the petitioner did not agree to continue the arrangement earlier agreed to under the tripartite agreement. Therefore, no agreement to that effect was signed with the State Government of Jharkhand or JSEB. Thus, the petitioner did not have any contractual obligation to recover the excess JSEB tariff from TISCO and adjust or pass on the differential amount to JSEB. There is neither any statutory enactment that compels the petitioner to collect the tariff from TISCO as agent of JSEB. It has been stated by the petitioner that the efforts are afoot to resolve the dispute by involving TISCO. Therefore, withholding of any amount by JSEB on account of TISCO differential tariff is unwarranted and illegal. JSEB is directed to refund the amount so withheld.

12% Free Hydel Power

24. JSEB's claim for free power is based on Ministry of Power's letter dated 1.11.1990. Ministry of Power letter dated 1.11.1990 firstly provides that 15% of generation capacity would be kept as "Unallocated" at the disposal of the Central Government to be distributed within the Region or outside, depending upon overall requirement. It further provides that 12% of power from the energy generated from the Central Sector Hydro-electric Projects would be supplied free of cost to those States of the Region, including the State where hydro-electric project is located, where distress is caused by setting up the project. Lastly, it lays down that the remaining 73% power would be distributed between "the States of the Region".

25. The condition precedent for claiming 12% free power is that distress is caused to the State in setting up the hydro-electric power project. JSEB has not averred that any distress was caused to its predecessor State, State of Bihar while setting up hydro-electric power project by the petitioner, located within the petitioner's Command Area. There is nothing on record to show that the erstwhile State of Bihar ever raised any demand for free power till formation of the State of Jharkhand. It is seen that the policy directive contained in Ministry of Power letter dated 1.11.1990 envisages keeping of 15% capacity at the disposal of the Central Government for allocation at its discretion depending upon the requirement. However, no part of the capacity of the petitioner's hydro-electric power projects is kept unallocated at the disposal of the Central Government for further allocation and the entire generation capacity is supplied to the States of West Bengal and Jharkhand whose Governments contribute towards the capital of the petitioner along with the Central Government. Therefore, the basic

premises on which 12% free generation can be claimed by a State are not applicable in the case of the petitioner's hydro-electric power project.

26. In accordance with clause (1) of Regulation 39 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (**the 2004 Tariff Regulations**), primary energy charge in case of hydro-electric power projects was worked out on ex-bus energy scheduled to be sent out from the hydro electric power generating station after adjusting for free power delivered to the home State. The petitioner had earlier filed Petition No 66/2005 for approval of tariff for its transmission and generation projects, under the 2004 Tariff Regulations for the period 1.4.2006 to 31.3.2009. The Commission by its order dated 18.10.2005 constituted a one-Member Bench to examine various tariff-related issues and to make appropriate recommendations to the Commission for its consideration and decision on tariff. The one-Member Bench in the order dated 5.5.2006 had observed as under on the issue of 12% free power:

"90. The 2004 regulations stipulate that saleable primary energy rate for the computation of primary energy charge of hydro station is determined after taking into account the 12% free power to the home state. DVC in its affidavit dated 12.9.2005 has submitted that tariff and terms and conditions for generation and sale of electricity by DVC were earlier determined under the DVC Act, wherein there was no provision of 12% free power to the home State. It appears that DVC does not favour free power to the home State.

91. We have considered the matter. Since power is to be supplied within the Damodar Valley and the hydro generating stations are also located in DVC area, there is merit in the submission of DVC. As such free power to the home State may not be considered."

27. The Commission in its order dated 3.10.2006 accepted the above recommendation of the one-Member Bench and determined the tariff without adjusting

the 12% free power. JSEB, who was party to the proceedings in Petition No 66/2005 is bound by the decision of the Commission and cannot stake claim for 12% free power.

28. The issue of supply of free power to JSEB was discussed in the meeting held on 3.2.2011 by the Secretary, Ministry of Power, where JSEB was also represented. After hearing the representatives of the petitioner and JSEB, Secretary, Ministry of Power categorically stated that 12 % free power was not applicable to the petitioner. The observation of Secretary, Ministry of Power in this regard is extracted below:

"As the Government Policy on 12 % free Hydel Power is applicable to those central generating stations which are covered by Gadgil formula, the same is not applicable to DVC as Gadgil formula is not applicable to DVC. He also pointed out that CERC has also given decision in favour of DVC in this regard. "

29. The upshot of the above discussion is that the provisions of 12% free power to home State contained in Ministry of Power letter dated 1.11.1990 is not applicable in the case of the petitioner. Accordingly, JSEB is liable to refund to the petitioner the amount withheld on account of free power.

Rebate on Tariff and Delayed Payment Surcharge

30. The petitioner has refuted JSEB's claim of 15% rebate on power bills (Demand Charge plus Energy Charge) after 1.4.2006 since the tariff is regulated under the orders of the Commission. As regards DPS, the controversy raised is whether DPS is chargeable on expiry of period of 60 days as claimed by JSEB or after 30 days, as claimed by the petitioner based on the provisions of the PPA. As held by the Constitution Bench of Hon'ble Supreme Court in PTC India Ltd Vs CERC (AIR 2010 SC 1338), the regulations framed under Section 178 of the Electricity Act, as a part of regulatory

framework, overrides the even existing contracts between the regulated entities as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations. Therefore, rebate on tariff and DPS have to be regulated in accordance with the regulations of the Commission as applicable from time to time. Accordingly, 15% rebate shall not be applicable on the tariff determined by this Commission.

31. It may, however, be pointed out that the parties have already settled the issue of DPS through mutual discussions at the reconciliation meeting held on 10.1.2014 when they agreed to DPS amount of ₹1628.56 crore for the period from 1.10.2001 to 31.3.2013. Accordingly, the issue of DPS need not be reopened.

Incentive

32. The petitioner has disputed JSEB's incentive claim for ₹195.58 crore on issuance of Bonds under the Securitization Scheme on the ground that JSEB had failed to comply with the provisions of the said Scheme. The petitioner has listed a number of defaults committed by JSEB, which, according to the petitioner, disentitles JSEB to claim incentive. JSEB has denied the correctness of the allegations of default. We have considered the petitioner's submission. In our considered opinion, JSEB is not entitled to incentive for reason of the defaults catalogued by the petitioner. It is also pointed out that JSEB seems to have given up the claim for incentive since the claim does not figure in the category of disputed amounts discussed in the meeting held on 10.1.2014.

Settlement of Differential Tariff for the period from April 2006 to April 2010

33. As stated above, the tariff for the period up to 31.3.2006 was determined by the petitioner under Section 20 of the DVC Act and thereafter the tariff determined by the Commission is applicable. However, the tariff determined by the petitioner was provisionally continuing till April, 2010. The tariff determined by the petitioner exceeded the Commission approved tariff. The petitioner has stated that JSEB and the petitioner have jointly computed the differential amount which comes to ₹857.47 crore. JSEB is said to have disputed its liability to pay the excess (differential) amount. A number of appeals relating to determination of tariff of thermal and hydro projects for the period 1.4.2006 to 31.3.2009 are pending before the Hon'ble Supreme Court. As the matter is *sub judice* before the Hon'ble Supreme Court, we do not deem it appropriate to give any directions. The issues will get resolved in the light of the directions of the Hon'ble Supreme Court in the pending appeals.

Line Losses

34. As stated by the petitioner, JSEB has claimed line losses of 15 off-take points of supply located at the petitioner's end until meters are shifted to JSEB's location. The petitioner has stated that line losses have been calculated in terms of the formula decided at ERPC forum and the petitioner agreed to pay JSEB outstanding dues of transmission losses after verification of calculation submitted by JSEB. In view of above, we direct the petitioner to pay JSEB ₹53.33 crore towards line losses for the period from September 2001 to June 2013.

Adjustment of ₹200 crore

35. The State Government of Jharkhand deposited an amount of ₹200 crore with the petitioner on JSEB's account. It is observed from the petitioner's submission dated 25.6.2014 that the total payment of ₹7149.05 crore as reconciled by the parties is inclusive of ₹200 crore received from Govt. of Jharkhand in February, 2013. Therefore, no grievance of JSEB survives in this regard.

Direction

36. It is directed that the amount found due or refundable shall be paid by JSEB latest by 31.3.2015, failing which the petitioner shall recover the entire amount in accordance with the Securitization Scheme along with interest @ 15% per annum on the total amount payable in terms of this order from 1.4.2015 till the date of realization.

Summary

37. We sum up our findings and directions as under:

(a) The petitioner is entitled to immediately recover the total undisputed amount of ₹4213.745 crore.

(b) The petitioner shall be provisionally paid the un-reconciled amount of ₹578.72 crore for the period July, 2013 to January, 2014 which shall be finally adjusted after reconciliation.

(c) The amounts withheld by JSEB on account of TISCO differential and 12% free power shall be released in favour of the petitioner.

(d) Rebate on tariff and DPS shall be regulated in accordance with the Commission's regulations on these two aspects. Accordingly, 15% rebate shall not be applicable on the tariff determined by this Commission. Since, however, DPS amount has already been reconciled between the parties in the meeting held on 10.1.2014, the issue need not be reopened.

(e) JSEB is not entitled to incentive under the Securitization Scheme on accounts various defaults of omission and commission committed.

(f) Differential tariff for the period April, 2006 to April, 2010 shall await the directions of the Hon'ble Supreme Court in the appeals pending before it.

(g) The petitioner shall pay JSEB an amount of ₹53.33 crore for line losses to the period from September, 2001 to June 2013.

(h) The amount found due or refundable in terms of this order shall be paid by JSEB latest by 31.3.2015, failing which the petitioner shall recover the entire amount in accordance with the Securitization Scheme along with interest @ 15% per annum on the total amount from 1.4.2015 till the date of actual realization.

38. With the above, the petition is disposed of.

Sd/-
(A.K. Singhal)
Member

sd/-
(M.Deena Dayalan)
Member

sd/-
(Gireesh B Pradhan)
Chairperson

