

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 211/MP/2016

**Coram:
Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 17th of May, 2019

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 Gopal Jain, Senior Advocate, JPL
Shri S. Venkatesh, Advocate, JPL
Shri Pratyush Singh, Advocate, JPL
Shri Sandeep Rajpurohit, Advocate, JPL
Shri Somesh Srivastava, Advocate, JPL
Shri Vikas Maini, Advocate, JPL
Shri Sharesh Sharma, Advocate, JPL
Shri Ayush Prasad, JPL
Shri Matrugupta Mishra, Advocate, GEPL
Shri Nishant Kumar, Advocate, GEPL
Shri Ambuj Dixit, Advocate, GEPL

ORDER

The Petitioner, Jindal Power Limited (JPL), has filed the Petition under Section 19 of the Electricity Act, 2003 (hereinafter referred to as ‘the Act’) read with Regulation 14 of the Central Electricity Regulatory Commission (Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 (hereinafter referred to as ‘the Trading Licence Regulations’) for revocation of inter-State trading licence granted to the Respondent, Global Energy Private Ltd. (hereinafter referred to as “GEPL”).

Background

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 has been granted a Category-I inter-State Trading Licensee by this Commission. The Petitioner entered into agreements with GEPL through binding Letters of Intent (LOI) for supply of power for the following periods:

Date of Lol	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 LOIs contain *inter-alia* the following terms and conditions for payment of bills with regard to supply of power:

- a. As per clause 8 of the LOI, the Respondent is obligated to pay the bill amount to the Petitioner within 15 days of submission of bills by the Petitioner.
- b. 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 LOI dated

17.9.2014 and after 16th day from the receipt of bill in respect of LOI dated 30.3.2015 and 18.8.2015.

c. 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.

4. Pursuant to LOI dated 17.9.2014 for supply of power from 1.10.2014 to 31.3.2015 which was accepted by the Respondent, GEPL, the Petitioner supplied power during the above period and raised monthly bills upon the Respondent. The Respondent did not make full payment against the bills raised by the Petitioner for the months of February 2015 and March 2015. As against the bills of `44.70 crore (`20.90 crore for February 2015 and Rs. 23.80 crore for March 2015), GEPL made a payment of only `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 (Rs.)	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

The last two post-dated cheques were to be used only when adequate back guarantee was not provided by the Respondent. Subsequently, 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 a LOI dated 30.3.2015 for supply of power from 1.4.2015 to 30.9.2015. The Respondent vide its letter dated 16.4.2015 furnished the following five post-dated cheques for Rs. 13,80,42,556/- towards balance outstanding dues for the power supplied pursuant to LOI dated 17.9.2014:

S. No.	Cheque No.	Amount (Rs.)	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 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 LOI 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 LOI dated 30.3.2015. After negotiation between the Petitioner and the Respondent with regard to the terms and conditions of fresh LOI and payment of outstanding dues for the energy supplied for the period from 1.2.2015 to 31.3.2015 (against LOI of 17.09.2014) and from 01.04.2015 to 30.6.2015 (against LOI of 30.03.2015), the Petitioner issued a fresh LOI 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 LOI 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 was not able to implement the terms

and conditions agreed under the LOI dated 18.8.2015 and requested the Petitioner to amend the disbursement dates and the effective period of the said LOI 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 8.9.2015. 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 Rs. 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 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. During the pendency of the above 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.

11. The Petitioner filed the present petition with the following prayers:

“(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. The Commission, after hearing the parties on maintainability as well as on merits, in its order dated 27.2.2018 issued the following directions:

“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 clause 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.”

13. The Respondent, GEPL challenged the said order dated 27.2.2018 in the Hon’ble High Court of Delhi in Writ Petition (Civil) No. 3061 of 2018. The Hon’ble High Court set aside the Commission’s order dated 27.2.2018 and remanded the matter with the following directions:

“6. I have heard the counsel for the parties. According to me, what impresses me at this juncture is the fact that CERC proceeded to decide the matter on merits, when, it had reserved its decision on maintainability of the action filed by Respondent No. 2.

6.1 In that sense, CERC did not adhere to a procedure, which is followed by most quasi-judicial bodies, and as a matter of fact by any adjudicatory forum of limited jurisdiction, which is, that it rules on the issue as to whether it has jurisdiction to entertain and try the matter placed before it. This decision necessarily would have to be taken prior to concerned quasi-judicial body embarking on a journey, so to speak, to decide the matter on merits.

6.2 It goes without saying, that CERC could have carried out this exercise by passing a composite order if, it was otherwise of the view that it had jurisdiction in the matter. CERC could have also decided to first rule on the issue of jurisdiction and, then, proceeded to decide the matter on merits. CERC in this case chose to decide the matter on merits without ruling on the aspect of jurisdiction. Though reference was made to Section 79 of the 2003 Act, no finding was returned by CERC on that aspect of the matter. In my view, CERC could not have proceeded to decide the matter on merits without rendering its decision on the issue of jurisdiction. As a matter of fact, no opportunity was granted by CERC on the writ petitioner to file a reply on merits.

7. Thus, having regard to this aspect of the matter, I am inclined to set aside the impugned order. CERC is accordingly, directed to revisit the issues which arise for considerations, in the Petition, filed under Section 19 of 2003 Act by respondent No.2. However, before proceedings further in the matter CERC would in the first instance, rule of its jurisdiction to entertain the matter. In case, CERC is of the view that it has jurisdiction the matter, it will call upon the writ petitioner to address the arguments on merits. In such a situation CERC, if it deems fit, could pass a composite order on jurisdiction as well as on merits. Needless to say that since respondent no.2 says its dues have remained outstanding for quite some time CERC, would decide the petition at the earliest, though not later than 10 weeks from the date of receipt of the copy of the order. Since no reply has been filed by the writ petitioner before CERC, it will do the needful within next two weeks.”

14. After remand of the matter from the Hon'ble Delhi High Court, the matter was heard at length both on maintainability and on merit. GEPL vide its affidavit dated 19.4.2018 filed its reply and the Petitioner filed rejoinder dated 17.5.2018. The Petitioner and GEPL have also filed their written submissions dated 4.6.2018 and 10.6.2018 respectively. The Petition was last heard on 9.10.2018 in which learned counsel for both parties advanced extensive arguments. The parties have also filed written submissions.

Submissions on maintainability of the Petition

15. On the issue of maintainability of the Petition, JPL has submitted as under:

(a) The present petition has been filed under Section 19 of the Act which as a subject matter falls within the exclusive jurisdiction of the Commission. As per Section 19(1)(a) and (b) of the Act, the Commission is bestowed with appropriate/ sufficient and requisite powers to revoke the licence granted by it, if the licensee makes wilful and prolonged default in doing anything required of him by or under the Act or the Rules or Regulations made thereunder and if the licensee breaches the terms and conditions of its licence. The Hon`ble Supreme Court in the case of Malik Medical Hall Vs. Union of India [(1974) SCC online Raj 21] has held that power to issue licence also includes power to revoke the licence.

(b) The Hon`ble Supreme Court in its Constitutional Bench judgment in the case of PTC Vs. CERC [(2010) 4 SCC 603] has held that the Electricity Act, 2003 is an exhaustive code on all matters concerning electricity. Therefore, the Petitioner without having any other efficacious remedy has approached this Commission under the present Petition inter-alia seeking revocation of trading licence granted to GEPL on account of various illegalities committed by it and also on account of specifically violating the terms and conditions of its licence and the terms and conditions and the obligations bestowed under Trading Licence Regulations.

(c) The Appellate Tribunal for Electricity (APTEL) vide its judgment dated 21.8.2017 in Appeal No. 64 of 2015 in the case of Western Electricity Supply Company of Odisha Ltd. and others Vs. Odisha Electricity Regulatory Commission and others *inter-alia* has held that Section 19 (1)(a), (b), (c) and

(d) prescribe the situations under which a licence may be revoked if after making an enquiry, the appropriate Commission is satisfied that public interest so requires. For the purpose of Section 19, enquiry means the act of seeking information or fact finding. If the notice of revocation is issued after conducting enquiry/ investigation and the licensee is made aware of it, compliance of section 19 is satisfied. Further, Section 19(1)(a) is attracted in case of contractual violation qua non-payment of dues/ securitisation amount.

(d) In the present case, the Commission has initiated enquiry under Section 19(1) by issuing notice on the Petition to GEPL. The present hearing is a part of the enquiry contemplated under Section 19(1) of the Act. GEPL has already filed its reply to the Notice and thereby has been given full and complete opportunity to present its case in the enquiry contemplated under section 19(1). If the Commission is satisfied that GEPL has violated its licence conditions as prescribed under Regulation 7 of the Trading Licence Regulations, then the Commission can issue notice to GEPL for revoking its licence.

(e) GEPL Licence dated 28.11.2008 mandates GEPL to carry out trading in terms of the Act, Rules and Regulations framed by the Commission from time to time. GEPL being trading licensee has the obligation to comply with the provisions of Regulation 7(h) of the Trading Licence Regulations to carry out trading of electricity in accordance with the agreed terms and conditions with the buyer and also to ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity. Regulation 7(c) provides that the trading licensee, in this case GEPL, cannot charge any amount exceeding the trading margin for the inter-State trading in electricity, as fixed by the Commission at

relevant point of time. As per Regulation 14(1)(a) of the Trading Licence Regulations, the Commission can revoke the licence of a trader if the licensee makes wilful and prolonged default in doing anything required of him by or under the Act, or the Rules or the Regulations framed thereunder. Further, Regulation 14(1)(b) provides that the licence of a Trader can be revoked if the licensee breaches the terms and conditions of his licence.

(f) In terms of Article 8 of the LOI dated 17.9.2014 and Article 9 of the LOI dated 30.3.2015, GEPL was obligated to pay the billed amount to JPL within 15 days of the submission of the bills. Further, Articles 10 and 11 of the said LOIs provides for a surcharge of 1.25% per month, leviable on GEPL for each day of delay on all the outstanding payments after completion of 30th day of the receipt of the said bills. GEPL has acted in contravention to the terms and conditions under the LOIs dated 17.9.2014 and 30.3.2015 and has failed to make payment of Rs. 24.90 crore along with surcharge of Rs. 10.05 crore for the power supplied during the period from April 2015 to June 2015. The said amount is over and above the trading margin that a trading licensee may charge for inter-State trade in electricity. This is in contravention of Regulation 7 (c) of the Trading Licence Regulations.

(g) GEPL by its various acts of omission and commission has intentionally violated a number of direct obligations provided in Regulation 7(a), (c), (d) and (h) and the terms and conditions of the LOIs dated 17.9.2014, 30.3.2015 and 18.8.2015, thereby rendering itself liable for revocation of its trading licence under Section 19(1)(a) of the Act read with Regulation 14 of the Trading Licence Regulations.

16. On the issue of maintainability, GEPL has submitted as under:

(a) Section 19 (1) of the Act provides that if the appropriate Commission after making an enquiry, is satisfied that public interest so requires, then it may revoke a licence in any of the cases mentioned in Section 19(1)(a) to (d) of the Act. There are two ingredients based on which the Commission can move towards revocation of licence, the first being an “enquiry” and second being “if public interest so requires”.

(b) An enquiry can be conducted by the Commission for the purposes of revocation of licence through analysing documents and information which are available, and the said documents and information, or the interpretation, is not disputed or pending adjudication before an appropriate forum or court. The documents which are filed by the Petitioner in its petition, alongwith their interpretation, cannot at all be presently relied upon by the Commission as part of enquiry, as the same are disputed by the Respondent in the prior instituted civil suit, being CS (OS) 2964 of 2015 (renumbered as CS (COMM) 174 of 2016), pending before the Hon’ble Delhi High Court.

(c) The Commission has issued the Trading Licence Regulations under Section 178 of the Act. However, there is no mention of Section 19 in the said Regulation, and therefore, Regulation 14 of the Trading Licence Regulation cannot be relied upon and has to be ignored. In this connection, reference has been made to the judgment of the Hon’ble Supreme Court in Bharathidasan University and Anr. vs. AICTE& Ors. reported in (2001) 8 SCC 676 and the judgment of the Hon’ble Appellate Tribunal for Electricity in Appeal No. 273 of 2006, titled as DVC vs. CERC.

(d) As regards the Regulation 7 (h) of the Trading Licence Regulations, the said regulation only provides that licensee has to carry out trading in accordance with the agreed terms and conditions and the licensee has to ensure timely payments of dues to the seller. The said provision does not at all contemplate that the disputed payments also need to be paid by the licensees to the seller. Dues mean a just, proper or regular amount which is payable but cannot include any amount which is disputed or subject matter of the court proceeding which in the present case is pending adjudication before the Hon'ble High Court of Delhi.

(e) The moment GEPL disputed the claims of the Petitioner through filing of the prior civil suit and through its reply on merits in the present case, the Commission cannot hold that GEPL owes money to the Petitioner, through the word "enquiry" present in Section 19(1), without carrying out an adjudication of the dispute for which there is no power available to the Commission under Section 79(1)(f) of the Act. Therefore, the Commission has to await the decision of the monetary dispute between the Petitioner and the Respondent in the proceeding pending before the Hon'ble High Court of Delhi. By exercise of the power through enquiry mentioned in Section 19, this Commission cannot assume dispute adjudicatory jurisdiction under Section 79(1)(f) of the Act which is otherwise not applicable for adjudication of the dispute between a trading licensee and a generator where no regulated tariff is involved.

(f) Under Section 79(1)(f) of the Act, this Commission has the jurisdiction to adjudicate dispute involving generating companies or transmission licensees connected with Clauses 79(1)(a) to 79(1)(d) of the Act. Even though the Petitioner is a generating company, the Respondent is neither a generating

company nor a transmission licensee and, therefore, the jurisdictional facts necessary for invoking the jurisdiction of the Commission is not in existence. Further, the subject matter of the dispute as evident from the prayers in the Petition relates to pure money claim and does not come within the ambit of Section 79(1)(a) to (d) and Section 79(1)(e) has been specifically left out from the scope of the Section 79(1)(f) of the Act.

(g) There is no non-obstante clause appearing in Section 19 in order to give the said provision an overriding effect upon Section 79. Hence, no power can be exercised by the Commission which has a semblance/ whiff of “dispute adjudicatory” function beyond the scope of Section 79(1)(f). Therefore, under the garb of “enquiry” under Section 19(1), this Commission cannot traverse upon a path which even remotely touches upon the “dispute adjudicatory” function falling under Section 79(1)(f), if the dispute is not falling within Sections 79(1)(a) to (d), as in the present case.

(h) If the present petition is allowed, then the same will open floodgates for various generators or other entities into filing frivolous petitions for the purpose of avoiding legitimate payments of electricity traders, under the garb of “enquiry” under Section 19(1). To avoid this mischief, which cannot be the intention of the legislature in enacting the Electricity Act, 2003, this Commission needs to reject the present petition. A licence revocation proceeding on the basis of alleged non-payment of dues can only be entertained if an appropriate forum has decided the issue and records adverse findings against the trader, which is not there in the present case.

(i) GEPL initiated a civil suit on 28.09.2015 being numbered as CS (OS) 2964 of 2015 (re-numbered as CS (COMM) 174 of 2016), against the Petitioner

for fraudulent termination of the Letter of Intent/ Settlement dated 18.08.2015. The above civil suit was dismissed by the Ld. Single Judge of the Hon'ble Delhi High Court on 28.09.2015. GEPL filed an appeal before the Division Bench of the Hon'ble Delhi High Court, wherein by way of order dated 06.10.2015, the Division Bench restored the above suit filed by the Respondent and directed the Single Judge to decide whether the Central Commission has the jurisdiction to decide the dispute between the generating company and trading licensee keeping in view the provisions of Section 79(1)(a) to (k) of the Act. The Petitioner did not at all challenge the above order of the Division Bench of the Hon'ble Delhi High Court and the said order has attained finality. The Petitioner has referred to an order dated 21.3.2017 of the Delhi High Court stating that as per the said order, this Commission can proceed with the present petition. However, the said order nowhere records the present proceedings and merely states that other authorities may continue to discharge their functions within their respective jurisdiction. Therefore, the present proceedings may be kept in abeyance and the Commission may await the decision of the Single Judge of the Delhi High Court on the question of jurisdiction of this Commission.

(j) Paragraphs 3, 10, 32, 39 and Grounds F and H of the petition relate to alleged commission of fraud by GEPL. 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. GEPL has referred to the judgment of the Hon'ble Supreme Court in GEPL v. CERC, reported in (2009) 15 SCC 570 and has stated that the Hon'ble Supreme Court in the said judgment held that pendency of criminal proceedings cannot be a ground for denial of trading license. In the present case, there is no such criminal

proceedings and mere allegations have been made by the Petitioner and as such, keeping in view the principles settled in the above judgment, there is no ground made for revocation of licence in the present petition filed by the Petitioner.

(k) It is a settled legal principle that when the same subject matter and legal issues have been canvassed in two different proceedings before two different fora, having regard to the basic and fundamental principle enshrined under Section 10 of the Code of Civil Procedure, 1908 (CPC) even if the two fora are existing on the same level in judicial hierarchy, the proceeding which was initiated first, should be allowed to go ahead and the subsequent proceeding should be put in abeyance, to await the outcome of the proceeding initiated first. In the present case, the proceeding initiated before the Hon'ble High Court, which was earlier in time and also before a higher forum, the same should be allowed to be completed first and this Commission may await the outcome of the said proceeding before the Hon'ble High Court. In order to avoid the possibility of conflicting judicial decisions, this Commission is required to stay its hands on merits given the principle of Section 10 of CPC and even otherwise on the basis of hierarchy.

17. The Petitioner has refuted the submissions of GEPL as recorded above and has submitted as under:

(a) Hon'ble Delhi High Court vide its Order dated 21.3.2017 in I.A No. 5287 of 2016 and I.A. No. 2487 of 2017 filed in C.S (COMM) 174 of 2016 has categorically held that there is no stay granted by the High Court in the Civil Suit filed by GEPL and the pendency of the suit before the Hon'ble Delhi High Court does not bar any other Authority to act within its Jurisdiction. Hon'ble

High Court being well aware of the pendency of the present proceedings had issued the said order dated 21.3.2017 which GEPL till date has not appealed against.

(b) Hon'ble Delhi High Court vide its Judgment dated 14.05.2009 passed in LPA No. 204 of 2009 titled as M/s Hindustan Motors Ltd. Vs. Amardeep Singh Wirk & Ors has held that proceedings under a special Statue and in a Civil Court can simultaneously go on, even if the issues involved in the two proceedings are substantially similar. The only requirement for continuation of such proceedings is that the remedies sought therein have to be independent of each other. In the present case, the relief being sought by JPL in the captioned Petition is independent of the relief being sought by GEPL in the Civil Suit pending before the Hon'ble Delhi High Court and can only be granted by the Commission under its Statutory Power conferred upon it under the Act. Therefore, the pendency of the Civil Suit filed by GEPL is no bar for continuation of the present statutory proceeding under Section 19 of the Act.

(c) The prayer in the Suit filed by GEPL is only for Payment of Damages and Return of Bank Guarantee. The final prayer as amended by GEPL even in April 2018 has culminated in a Suit limited to the aforesaid two prayers. The original prayer in respect of the post-dated cheques has been deleted and/or given up by GEPL. Hence the prayer in the Suit does not even purport to question the undisputed and undisputable dues payable to the Petitioner. Therefore, the pendency of the Suit has nothing whatsoever to do with the present proceedings under Section 19 of the Act.

(d) If the contentions of GEPL were accepted, then the statutory remedy would be wholly frustrated and stultified. The public interest requires that the

proceedings under Section 19 be taken against GEPL so as to prevent other hapless generators suffering the same fate as that of the petitioner. Public interest would suffer if a palpable breach of the licence conditions is sought to be justified on frivolous and untenable grounds. It is, therefore, in the public interest to initiate and continue the proceedings under Section 19.

(e) GEPL's reliance on Section 10 of the CPC is completely misplaced since the very same Court i.e. the Hon'ble High Court of Delhi has clarified in its Order dated 21.03.2017 that pendency of the Suit is no bar for an Authority to act as per its Jurisdiction. The Hon'ble Supreme Court in the case of National Institute of Mental Health & Neuro Science vs. C. Parameshwara [(2005) 2 SCC 256] has held that Section 10 does not apply to proceedings initiated under a different Statute. Apart from the inapplicability of Section 10 of the CPC to proceedings under special statute, the Suit being CS (Comm) 174 of 2016 which is pending before the Hon'ble Delhi High Court was originally a Suit for Injunction filed by GEPL and is subsequently being sought to be amended as Suit for Damages. The said proceedings have been initiated by GEPL and JPL has taken a consistent view that the subject matter of dispute ought to be agitated before this Commission. On the other hand, the present Petition has been filed by JPL under Section 19 of the Act, which is specifically qua revocation of GEPL's Trading Licence for violation of Regulation 7 read with Regulation 14 of the Trading Licence Regulations. The two proceedings are independent and mutually exclusive and the reliefs are being sought under completely distinct statutes.

(f) The reliance placed by GEPL on Section 79 of the Act is completely misplaced. The present Petition has been filed under Section 19 and not under

Section 79 of the Act. The two provisions are completely independent and mutually exclusive. Section 79(1)(f) provides for adjudication of dispute whereas under Section 19, the Commission has to conduct an enquiry for revocation of License. Section 19 is a special provision whereas Section 79 is a general provision qua adjudication of dispute. The Hon'ble Supreme Court in catena of Judgments [Commercial Tax Officer, Rajasthan vs. Binani Cement Limited & Anr {2014 8 SCC 319} and J.K Cotton Spinning & Weaving Mills Co Ltd vs State of U.P {(1961) 3 SCR 185}] has held that as per the rule of statutory interpretation, special provision of the statute will override the general provision in the same statute. The Petitioner has not sought for adjudication of any dispute with GEPL and has merely provided information to the Commission qua the arbitrary and dishonest conduct of GEPL whereby it has intentionally breached the terms and conditions of its Licence granted by this Commission.

Analysis and Decision on Maintainability of the Petition

18. Based on the pleadings in the Petition, oral submissions during the hearing and the written submissions filed by the Parties, the first question that arises for consideration is whether the Petition is maintainable under Section 19 of the Act. We, therefore, proceed to examine this issue in terms of directions of the Hon'ble High Court of Delhi in terms of its Order in Writ Petition (Civil) No. 3061 of 2018 while setting aside the decision of this Commission's Order dated 27.2.2018.

19. The present Petition has been filed under Section 19 of the Electricity Act, 2003 read with Regulations 7 and 14 of the Trading Licence Regulations. The Petitioner has submitted that GEPL as a trading licensee is not only required to carry out trading in accordance with the agreed terms and conditions but is also required

to ensure timely payment of 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 GEPL 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, 30.3.2015 and 18.8.2015 has made defaults in payment of dues to the Petitioner with regard to the purchase of electricity. The Petitioner has submitted that it is a fit case for initiation of proceedings under Section 19(3) of the Act.

20. In response to GEPL's reliance on Section 10 of the CPC, the Petitioner has stated that this is completely misplaced. The Petitioner has submitted that Hon'ble Delhi High Court vide its Order dated 21.3.2017 in I.A No. 5287 of 2016 and I.A. No. 2487 of 2017 filed in C.S (COMM) 174 of 2016 has categorically held that there is no stay granted by the High Court in the Civil Suit filed by GEPL and the pendency of the suit before the Hon'ble Delhi High Court does not bar any other Authority to act within its Jurisdiction. This Order has not been appealed against by GEPL. In support of non-applicability of Section 10 of CPC, the Petitioner has placed reliance upon judgment of Hon'ble Supreme Court in the case of National Institute of Mental Health & Neuro Science vs. C. Parameshwara [(2005) 2 SCC 256] wherein it was held that Section 10 does not apply to proceedings initiated under a different Statute.

21. The Petitioner has also referred to judgement of Hon'ble Delhi High Court dated 14.5.2009 passed in LPA No. 204 of 2009 titled as M/s Hindustan Motors Ltd. Vs. Amardeep Singh Wirk & Ors wherein it was held that proceedings under a special Statute and in a Civil Court can simultaneously go on, even if the issues involved in the two proceedings are substantially similar. The only requirement for continuation of such proceedings is that the remedies sought therein have to be

independent of each other. The Petitioner has stated that in the present case, the relief being sought by the Petitioner before this Commission is independent of the relief being sought by GEPL in the Civil Suit pending before the Hon'ble Delhi High Court. The Petitioner has further submitted that the prayer of GEPL in Hon'ble High Court is for Payment of Damages and Return of Bank Guarantee. Therefore, the pendency of the Suit has nothing whatsoever to do with the present proceedings under Section 19 of the Act.

22. The Petitioner has submitted that public interest requires that the proceedings under Section 19 be taken against GEPL so as to prevent other hapless generators from suffering the same fate as that of the petitioner.

23. Apart from the inapplicability of Section 10 of the CPC to proceedings under special statute, the Suit being CS (Comm) 174 of 2016 which is pending before the Hon'ble Delhi High Court was originally a Suit for Injunction filed by GEPL and is subsequently being sought to be amended as Suit for Damages. The said proceedings have been initiated by GEPL and JPL has taken a consistent view that the subject matter of dispute ought to be agitated before this Commission. On the other hand, the present Petition has been filed by JPL under Section 19 of the Act, which is specifically qua revocation of GEPL's Trading Licence for violation of Regulation 7 read with Regulation 14 of the Trading Licence Regulations. The two proceedings are independent and mutually exclusive and the reliefs are being sought under completely distinct statutes.

24. The Petitioner has submitted that reliance placed by GEPL on Section 79 of

the Act is completely misplaced. The present Petition has been filed under Section 19 and not under Section 79 of the Act. Under Section 19 of the Act, Commission has to conduct an enquiry for revocation of License.

25. On the other hand, the Respondent has argued that in terms of Section 19 of the Act, there are two ingredients based on which the Commission can move towards revocation of licence, the first being an “enquiry” and second being “if public interest so requires”. It has stated that an enquiry can be conducted through analysing documents and information which are available. It has further stated that such documents or information or interpretation should not be disputed or pending adjudication before an appropriate forum or court. It has argued that the documents filed by the Petitioner in its Petition are disputed by the Respondent in the prior instituted civil suit and, therefore, cannot be relied upon.

26. The Respondent has contested mandate of the Trading Licence Regulations stating that it has been issued under Section 178 of the Act and there is no mention of Section 19 of the Act in the Regulation 14 of the Trading License Regulations.

27. As regards the Regulation 7(h) of the Trading Licence Regulations, the Respondent has submitted that the said regulation does not provide that the trading licensee has to make disputed payments also. It has argued that the “dues” means a just, proper or regular amount and not any disputed amount or an amount that is subject matter of the court proceeding.

28. The Respondent has argued that the Commission doesn't have jurisdiction under Section 79 (1)(f) of the Act to adjudicate upon the amount due and it can be decided only by the Hon'ble High Court. It has submitted that the Commission has to await decision of the monetary dispute between the Petitioner and the Respondent before proceeding with the request of the Petitioner in the instant Petition.

29. The Respondent has argued that if the present Petition is allowed, it will open floodgates for various generators or other entities into filing frivolous Petitions for avoiding legitimate payments of electricity traders, under the garb of "enquiry" under Section 19(1). A licence revocation proceeding on the basis of alleged non-payment of dues can only be entertained if an appropriate forum has decided the issue and records adverse findings against the trader, which is not there in the present case.

30. The Respondent has stated that it is for the Single Judge Bench of Hon'ble High Court of Delhi to decide whether the Central Commission has the jurisdiction to decide this dispute. With regard to the Petitioner's reference to an order dated 21.3.2017 of Hon'ble Delhi High Court, the Respondent has stated that the said order nowhere records the present proceedings and merely states that other authorities may continue to discharge their functions within their respective jurisdiction. The Respondent has, therefore, requested that the present proceedings may be kept in abeyance and the Commission may await the decision of the Single Judge of the Delhi High Court on the question of jurisdiction of this Commission.

31. The Respondent has further stated that having regard to the basic and fundamental principle enshrined under Section 10 of the Code of Civil Procedure,

1908 (CPC), the proceedings which was initiated first, should be allowed to go ahead. It has stated that the proceedings initiated before the Hon'ble High Court, which was earlier in time and also before a higher forum, should be allowed to be completed first and this Commission may await the outcome of the said proceeding.

32. We now proceed to consider the submissions of the parties and decide on the issue of maintainability. Section 19 of the Act deals with revocation of licence of a licensee under certain circumstances. Section 19 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 willful 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 Revocation of licence 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.”

33. As per Section 19 of the Act, the licence of a licensee can be revoked in any of the situations mentioned in clauses (a) to (d) of sub-section (1) of Section 19 of the Act, if the Commission, after enquiry, is satisfied that public interest so requires. The Appellate Tribunal for Electricity (APTEL) in Appeal No. 64 of 2015 & I.A. Nos. 92, 121 and 131 of 2015 (Western Eastern Electricity Supply Company of Odisha Ltd. and Others Vs Odisha Electricity Regulatory Commission and Others) has dealt with the word “enquiry” under Section 19(1) of the Act as under:

“19. We shall now analyse the above quoted provisions. The term “enquiry” used in Section 19(1) of the Electricity Act has been the subject matter of debate. It is important to note that the Electricity Act does not provide for any procedure or method of enquiry. It does not prescribe any time limit for enquiry. Since the Electricity Act does not define the term “enquiry”, we must turn to its dictionary meaning. Chamber’s 20th Century Dictionary (New Edition 1983) defines the terms inquire, enquire as to ask questions : to make an investigation. The Oxford English Reference Dictionary 1955 defines “enquiry” as the act or an instance of asking or seeking information. Black’s Law Dictionary, Eighth Edition defines “inquiry” as ‘fact finding’. Thus, enquiry means the act of seeking information or fact finding. Since Section 19 does not prescribe any time limit, enquiry can be an enquiry or the process of fact finding spread over or covering an antecedent time span. The important Judgment requirement of such a process is that the material collected in such enquiry should be confronted to the licensee in the proceeding under Section 19(3) which requirement has been met in this case as we shall soon see this case as we shall soon see.”

As per the above judgement, the word “enquiry” has not been defined under the Act. It has been inferred that “enquiry” means the “act of seeking information” or

“fact finding”. The judgment also states that there is no time limit provided under Section 19 of the Act. The judgment further provides that the materials collected in such enquiry have to be confronted to the licensee under Section 19(3) of the Act. Even GEPL in para 7 of its written submission has submitted that “*an enquiry can be conducted by a Commission for the purposes of revocation of licence through analysing documents and information which are available....*”. In our view, the process of “enquiry” for the purpose of Section 19(1) can be undertaken on the basis of the documents and information placed on record during the proceedings of the Petition.

34. On perusal of the record, it is evident that GEPL filed CS (OS) 2964 of 2015 (subsequently re-numbered as “CS(COMM) 174 of 2016”) before the Hon`ble High Court of Delhi raising certain disputes with regard to the Letters of Intent (LOIs) dated 17.9.2014, 30.3.2015 and 18.8.2015 between the Petitioner and GEPL. GEPL sought the following reliefs in the said Petition:

“It is therefore, most respectfully prayed that this Hon`ble Court under the facts and circumstances of the present case, may most graciously be pleased to:

(a) pass a decree of permanent injunction against the Defendant and its representatives or successors in interest or any other person claiming to be authorised by the Defendant to restrain them from invoking and precipitating the invocation of the Bank Guarantees both dated 31.03.2015 bearing reference numbers 003GM03150900005 and 003GM03150900006 amounting to Rs. 9 Crores and Rs. 3 Crores respectively as issued by-the Defendant No. 2;

(b) pass a decree of permanent injunction restraining the Defendant No. 2 bank from releasing or disbursing funds under Bank Guarantees dated 003GM03150900005 and 003GM03150900006 amounting to Rs. 9 Crores and Rs. 3 Crores respectively;

(c) pass a decree of permanent injunction against the Defendant and its representatives or successors in interest or any other person claiming to be authorised by the Defendant to restrain them from presenting and precipitating :the encashment of the post-dated cheques bearing nos. 498722 and 504855 for an amount of Rs. 2,50,00,000/- and Rs. 3,80,42.553/- respectively, both dated 28.10.2015, issued on ICICI Bank Ltd.;

(d) pass a decree of declaration, declaring that the withdrawal / termination by the Defendant, of the letter / settlement dated 18.08.2015, Was illegal and bad in law;

(e) pass a decree of declaration, declaring that the Defendant is not entitled to deposit and/or encash and/or seek credit in respect of cheques bearing nos. 498721 and 504854, both dated 28.09.2015 each amounting to Rs. 2,50,00,000/- and the cheques bearing nos. 498722 and 504855 amounting Rs. 2,60,00,000/- and Rs. 3,80,42,556/- respectively, dated 28.10.2015, all drawn on ICICI Bank Ltd., and that the action of 'the Plaintiff in issuing stop payment instructions in respect of cheque nos. 498721 and 504854 on ICICI Bank Ltd. is correct and valid in law,

(f) pass a decree of mandatory injunction directing the Defendant to return to the Plaintiff the cheques bearing nos. 498721 and 504854, both dated 28.09.2015 each amounting to Rs. 2,50,00,000/- and the cheques' bearing nos. 498722 and 504855 amounting Rs. 2,50,00,000/- and Rs. 3,80,42,556/- respectively, both dated 28.10.2015, issued on ICICI Bank Ltd; and

(g) Pass any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case and in the interest of justice."

35. The Petitioner, who is Defendant No.1 in the above mentioned Petition, sought dismissal of the said Petition on the ground that in the light of the judgment of the Hon'ble Supreme Court in M/s. Gujarat Urja Vikas Nigam Ltd. v. Essar Power Limited [(2008) 4 SCC 75] and judgment of Division Bench of this Hon'ble Court in PTC India Ltd. v. Jaypee Karcham Hydro Corporation Ltd. [2010 ELR (Delhi) 976], this Commission is the appropriate forum for adjudication of disputes between a generator and trading licensee. Learned Single Judge of the Hon'ble High Court vide order dated 28.9.2015 dismissed the suit stating that the suit was not maintainable as the jurisdiction to adjudicate upon a dispute between the licensee and the generator vests with the Regulatory Commission. On appeal before the Division Bench by GEPL in Appeal No. RFA (OS) 93/2015, 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 the following directions:

"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.

5. We note that the two bank guarantees have since been invoked. It would be therefore open to the learned Single Judge to pass such interim orders as would be permissible keeping in view the issue of the maintainability of the suit as also the merits of the challenge to the invocation of the bank guarantees.

6. *The appeal is allowed. Impugned order dated September 28, 2015 is set aside. CS (OS) No. 2964/2015 and all pending applications are restored in the suit.*”

36. GEPL filed an application for amendment of the suit and after the amendment was allowed, the suit has been renumbered as CS (COMM) No. 174 of 2016. In the said suit, GEPL has made the following prayers (as per the amendment carried out in the suit in April 2018):

“(a) Pass a decree of declaration, declaring that the withdrawal/ termination by the Defendant of the letter/ settlement dated 18.8.2015, was illegal and bad in law;

(b) Pass a decree directing the Defendant No. 1 to pay to the Plaintiff a sum of Rs. 18,33,77,833 (rupees 18.33 crore only) on account of damages as a consequence of having to purchase power from other generator, along with interest thereupon, pendent lite and future interest @18% p.a. from September, 2015 till date of payment.

(c) Pass a decree directing the Defendant No. 1 to pay to the Plaintiff a sum of Rs. 2,00,00,000/- (Rupees 2 crore only) on account of loss of reputation.

(d) Declare that the invocation of the bank guarantee was an illegal and wrongful act on the part of the Defendant and further grant appropriate consequential relief to the Plaintiff and against the Defendant in this regard; and

(e) Direct the Defendant to pay a sum of Rs. 12,00,00,000/- (Rupees Twelve Crore Only) being the value of Bank Guarantee encashed by the Defendant wrongfully and illegally.

(f) Pass any such other order/ orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case and in the interest of justice.”

37. The Petitioner 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:

“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.”

38. The Petitioner has submitted that Hon'ble High Court being aware of the pendency of the present proceedings has issued the above order which GEPL has not appealed against. On the other hand, GEPL has submitted that the above order dated 21.03.2017 nowhere mentions about the present proceedings before the Commission nor it records that the present proceedings can continue. GEPL has further stated that the order does not at all convey that this Commission has the jurisdiction or power to adjudicate the monetary dispute between the Petitioner and GEPL.

39. We note that the present petition was filed under Section 19 of the Act read with relevant provisions of the Trading Licence Regulations in the year 2016 and this was before passing of the order dated 21.3.2017 by the Single Judge of the Hon'ble High Court. The Order was on the basis of the submissions of the learned counsel for the Petitioner that other authorities before whom the matters are pending were not taking any steps on account of the pendency of the suit before the Hon'ble High Court. On that it was clarified by the Hon'ble High Court that there was no stay in the matter and that the pendency of the suit does not bar the other authorities to act within their jurisdiction. We do not agree with the contention of the Respondent that the order dated 21.03.2017 does not allow the present proceedings to continue. The Respondent's approach is more in the nature of hair-splitting than arguing on constructive import of the Order of the Hon'ble High Court. In our view, other authorities mentioned by the Hon'ble High Court include this Commission or for that matter any other authority acting within its jurisdiction. In other words, we infer from the judgment of the Hon'ble High Court that there being no stay on proceedings before this Commission, we may continue with the proceedings if this Commission

has jurisdiction. Therefore, we reject the contention of GEPL that the present Petition is not maintainable on account of the pendency of CS (COMM) No. 174 of 2016 before the Hon'ble High Court of Delhi.

40. GEPL has raised an objection that an enquiry can be conducted by the Commission under Section 19 of the Act through analysing the documents and information which are available and that the said documents and information or their interpretation should not be disputed or pending adjudication before another appropriate forum. According to GEPL, since the documents filed by the Petitioner in the present Petition are disputed by GEPL in CS (COMM) No. 174 of 2016 pending before Hon'ble High Court of Delhi, the said documents cannot be relied upon in the present proceedings. We note that the prayers of the Respondent before Hon'ble High Court in CS (COMM) No. 174 of 2016 pertain to seeking a declaration that the withdrawal of the LOI dated 18.8.2015 as illegal; requesting for damages for purchasing power from alternative sources; compensating for loss of reputation; and for refund of the Bank Guarantee encashed. On the other hand, the scope of the proceedings before this Commission relate to non-compliance of the provisions of Section 19 of the Act, Trading Licence Regulations and terms and conditions of trading licence. In our opinion, the matter (monetary dispute) is under dispute before the Hon'ble High Court and not the authenticity of the documents submitted by the parties. We notice that none of the prayers of the Respondent before the Hon'ble High Court relate to challenging authenticity of documents. In our view, the Commission while holding the enquiry under Section 19(1) of the Act can consider these documents (LOIs, correspondences, etc.) to arrive at a decision particularly when the Hon'ble High Court has clarified in the order dated 21.3.2017 that *"pendency of this suit does not bar the other authorities to act within its jurisdiction"*.

41. GEPL has raised an objection that by exercising powers through enquiry mentioned in Section 19 of the Act, the Commission cannot assume dispute adjudicatory jurisdiction between a trading licensee and a generator where no regulated tariff is involved. By referring to provisions of Section 79(1)(f) of the Act, the Respondent has stated that this Commission has the jurisdiction only to adjudicate disputes involving generating companies or transmission licensees connected with Clauses 79(1)(a) to 79(1)(d) of the Act and that Section 79(1)(e) has been specifically left out from the scope of the Section 79(1)(f) of the Act. Section 79(1)(e) relates to trading licensees. It has further stated that even though the Petitioner is a generating company, the Respondent is neither a generating company nor a transmission licensee and, therefore, the jurisdictional facts necessary for invoking the jurisdiction of the Commission is not in existence.

42. GEPL has further submitted that there is no non-obstante clause appearing in Section 19 of the Act which gives the said provision an overriding effect on section 79 of the Act. Therefore, under the garb of “enquiry” under Section 19(1), this Commission cannot traverse upon a path which even remotely touches upon the “dispute adjudicatory” function falling under Section 79(1)(f), if the dispute is not falling within Sections 79(1)(a) to (d), as in the present case.

43. The question arises whether adjudication of dispute between the parties is a condition precedent for exercise of the jurisdiction under Section 19 of the Act. 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”. Section 79(1)(e) of

the Act vests functions upon the Central Commission *“to issue licences to persons to function as transmission licensee and 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 of a licensee and also the circumstances and procedure for revocation of licence. One of the conditions under which the licence can be revoked is the *“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”*.

44. 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.”

45. The Commission has specified the Trading Licence Regulations which contain, *inter alia*, 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. Regulation 7 of the Trading Licence Regulations specifies the obligations to be discharged by a trading licensee during the subsistence of the trading licence. Regulation 7 of Trading Licence Regulations is extracted as under:

“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."

46. 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. If a trading licensee fails to discharge its trading activity in compliance with these obligations, he will be liable for action under Section 19(1) (a) of the Act.

47. If the Commission, after making an enquiry, is satisfied that any of the circumstances exists where Commission is of the view that conditions of grant of licence have been violated and if public interest so requires, licence can be revoked. As per Section 19 of the Act, 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 decision has to be taken by the Commission 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 of licence and further satisfaction that such revocation would be in public interest, are the relevant considerations for exercise of power of revocation of licence under Section 19 of the Act. The language of Section 19 is clear and unambiguous. Adjudication of dispute between the parties involving the licensee is not a pre-condition for initiation of action under Section 19 of the Act. The parties, for adjudication of dispute between them, may approach appropriate forum

or court of law having jurisdiction in this regard. As far as action under Section 19 of the Act with regard to revocation of licence is concerned, the ingredients of enquiry and requirement of public interest have to be satisfied.

48. In the present Petition, the Petitioner has not sought adjudication of any dispute with GEPL under section 79(1)(f) of the Act. Rather the Petitioner has filed this petition under Section 19 of the Act. We have already discussed above that adjudication of dispute between a generator and a trading licensee under Section 79(1)(f) of the Act is not a pre-condition for initiation of action under Section 19 of the Act. It is the objective satisfaction of the Commission about the existence of one or more of the conditions under clauses (a) to (d) under sub-section (1) of Section 19 of the Act which are material factors to be considered for initiation of action under section 19 for revocation of licence apart from being satisfied that such revocation would be in public interest. In view of the above, this objection of the Respondent is not sustainable.

49. GEPL has argued that the present Petition is hit by Section 10 of the Code of Civil Procedure, 1908 (CPC). Section 10 of CPC provides as under:

“10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.”

50. GEPL has submitted that for granting prayers (a), (b) and (d) of the present Petition, the Commission has to necessarily go into the issue as to “whether the Petitioner was correct in terminating the letter/LOI dated 18.8.2015 and the Respondent owes money to the said Petitioner”, which is directly and substantially

the same issue as in the civil suit filed by the Respondent before the Hon'ble High Court i.e. whether the Petitioner owes Rs.20.33 crore towards damages and Rs.12 crore towards wrongful invocation of Bank Guarantee to the Respondent or the Petitioner was correct in terminating the letter/LOI dated 18.8.2015. GEPL has submitted that since the said suit has been filed much prior to the initiation of the present proceedings, the Commission ought not to adjudicate the present Petition till the pendency of the aforementioned suit filed by GEPL.

51. In our view, the scope of the Civil Suit filed by GEPL before the Hon'ble High Court and the present Petition are different. While GEPL has disputed the termination of LOI and encashment of Bank Guarantee in the Civil Suit before the Hon'ble High Court, the present Petition has been filed by the Petitioner with regard to non-compliance of the provisions of the Act, Trading Licence Regulations and terms and conditions of the trading licence by GEPL, even though the documents relied upon by the Petitioner and GEPL are common. Therefore, the matter in the present Petition is neither directly nor substantially related to the issue in Civil Suit filed by GEPL before the Hon'ble High Court. In any case, as already stated in earlier part of this Order, the Hon'ble High Court in its order dated 21.3.2007 has clarified that there is no stay in the Civil Suit and pendency of the suit is no bar for an authority to act within its jurisdiction.

52. Another objection of GEPL is that Paras 3, 10, 32, 39 and Grounds F and H of the Petition relate to alleged commission of fraud by GEPL. GEPL has submitted that this allegation needs to be proved in a criminal court after a trial. GEPL has contended that trading licence cannot be revoked based on mere allegations of the Petitioner. We note that the Petitioner has alleged fraud by the Respondent in the

instant Petition filed under Section 19 of the Act and has prayed for revocation of licence of the Respondent. In our view, the Commission has to confine its enquiry only to ascertain whether any case is made out against GEPL under clauses (a) to (d) of sub-section (1) of Section 19 of the Act for revocation of licence. The Respondent cannot proceed on the premise that the alleged fraud against the Respondent by the Petitioner will be accepted by the Commission during the process of enquiry. In our view, this objection of GEPL is unfounded and based upon conjectures.

53. GEPL has further submitted that Regulation 14 of the Trading Licence Regulations cannot be relied upon and has to be ignored as there is no mention of Section 19 of the Act in the said regulation. The Respondent is carrying out trading activity and enjoying all the privileges available to it under the Regulations and when it comes to revocation of licence for alleged violation of the very same provisions, it has come out with arguments that the Regulations 14 do not refer to Section 19 of the Act and hence no action can be taken against it under Section 19 of the Act. If we go by the argument of the Respondent, no action can be taken against any trader for any violations of any provisions of the Trading Licence Regulations or Terms and Conditions of Licence granted to it. This would lead to absurdity.

54. Trading Licence Regulations have been framed by the Commission in exercise of its powers under Section 178 of the Act. Section 178(1) of the Act says that the Central Commission may, by notification, make regulations consistent with the Act and the Rules generally to carry out the provisions of the Act. Further, Section 178(2) provides that "in particular and without prejudice to the generality of power contained in sub-section (1), such regulations may provide for all or any of the

following matters". Clauses (a), (b), (c), (d), (e) and (f) of sub-section (2) of Section 178 deal with Sections 14, 15, 16, and 18 of the Act. However, since the power of revocation is vested in the Commission under Section 19 of the Act, considering the "generality" condition in Section 178(1) of the Act, there can be no doubt that Regulation 14 of the Trading Licence Regulations has been validly made to carry out the purposes of the Act including those provided under Section 19 of the Act. In view of the above, we are, therefore, not in agreement with contentions of GEPL.

55. In the light of the above discussions, we conclude that this Commission has jurisdiction in the matter and the present Petition is maintainable under Section 19 of the Act read with Section 14 of the Trading Licence Regulations and Terms and Conditions of licence issued to GEPL.

Submission on Merit of the Case

56. While remanding the matter to the Commission, the Hon'ble High Court of Delhi in its order dated 27.2.2018, had observed as under:

"7.....CERC is, accordingly, directed to revisit the issues which arise for consideration in the petition filed under section 19 of the 2003 Act by respondent No.2. However, before proceeding further in the matter, CERC would in the first instance, rule on its jurisdiction to entertain the matter. In case, CERC is of the view that it has jurisdiction in the matter, it will call upon the writ petitioner to address the arguments on merits. In such situation, CERC, if it deems fit, could pass a composite order on jurisdiction as well as on merits....."

57. During the hearing, the Petitioner and GEPL have advanced arguments on maintainability as well as merits. Having decided that the Commission has the jurisdiction to consider the case of the Petitioner for revocation of licence under Section 19 of the Act read with Trading Licence Regulations, we are proceeding to examine the issue on merit whether a case for revocation of trading licence of GEPL has been made out.

58. Section 19(1)(a) of the Act provides that licence can be revoked “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.” 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 provides for the obligations of the licensee during the subsistence of its licence. 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.

59. Next we consider the submissions of the parties on the merit of the case in order to decide whether GEPL has violated the provisions of Regulation 7(a), (c), (d) and (h) of the Trading Licence Regulations.

60. The Petitioner has submitted the following on merit of the case:

(a) GEPL, for the first time vide its email dated 11.6.2015 which refers to LOI dated 30.3.2015, sought downward revision of tariff. At the time of issuance of letter dated 11.6.2015 and later the letter dated 16.6.2015, the supply of power under LOI dated 17.9.2014 (there were three LOIs, dated 17.09.2014, dated 30.03.2015 and dated 18.08.2015) was over and LOI dated 30.3.2015 was in operation that involved supply of power for the period from 1.4.2015 to 30.9.2015. Therefore, it is completely an afterthought on behalf of GEPL to mislead the Commission by contending that a dispute arose between the parties qua the applicable tariff under the LOI dated 17.9.2014 on account of its business having become unviable. The period in question as well as series of communication exchanged between the parties will provide evidence that it was only the LOI dated 30.3.2015, which was the subject matter of communications in the said period. Therefore, GEPL at this belated stage cannot contend that payments pursuant to LOI dated 17.9.2014 was made on ad hoc basis while the issues pertaining to higher rate of tariff were to be resolved.

(b) GEPL vide its letter dated 27.3.2015 and 16.4.2015 has unequivocally acknowledged and admitted to the outstanding payable dues. Therefore, once GEPL has accepted and acted upon the terms of the LOI dated 17.9.2014 and reaped benefit out of the same, it cannot now approbate and reprobate and be allowed to wrongly contend that the terms of the LOI dated 17.9.2014 were being renegotiated. Subsequent to LOI dated 30.3.2015, GEPL vide its letter dated 16.4.2015 unequivocally confirmed that the ongoing arrangement for supply of power shall be as per the terms and conditions agreed under LOI

dated 30.3.2015. Therefore, the contention of GEPL that LOI dated 30.3.2015 was never finalized is false and an afterthought.

(c) The contention of GEPL that GEPL sought for downward revision of applicable tariff under the LOI dated 30.3.2015 for the first time on 11.6.2015 i.e. after 41 days of the LOI becoming effective, is unimaginable. At this stage, GEPL cannot contend that it was sourcing power for the period from April 2015 to June 2015 under the assumption that JPL will charge tariff of Rs. 2.60/kWh, when there was no such communication or even an inference by GEPL prior to 11.6.2015. Since the request for downward revision of tariff sought by GEPL on 11.6.2015 was straightaway rejected by JPL on 17.6.2015, the contention of GEPL that negotiations were going on between the parties qua the final applicable tariff is an afterthought, as no such communication related to negotiation of tariff ever took place before letter of GEPL dated 11.6.2015. However, the purported negotiation initiated by GEPL on 11.6.2015 unequivocally failed on 17.6.2015, as JPL clarified its intent that there would be no revision in tariff.

(d) The contention of JPL that it was under the impression that JPL will revert back to the tariff of Rs. 2.60/kWh or that negotiations were going on with regards to the final applicable tariff under the LOI dated 30.3.2015 is self-defeating and contrary to its representation made under letter dated 16.6.2015, wherein GEPL has stated that payment including late payment surcharge would be made strictly in accordance with LOI dated 30.3.2015.

(e) GEPL vide its email dated 22.6.2015 expressed its inability to perform as per the terms and conditions of the LOI dated 30.3.2015 stating that the tariff being charged by JPL was unviable. Once JPL rejected the request of GEPL

for downward revision of the tariff agreed in LOI dated 30.3.2015 vide its communication dated 17.6.2015, GEPL on its own cannot contend that negotiations for revision of tariff were ongoing between the parties.

(f) JPI had never agreed for the tariff of Rs. 2.60/kWh, which is evident from JPL's letter dated 17.8.2015, wherein JPL while referring to GEPL's letter dated 6.8.2015 had in unambiguous terms reinforced the conclusiveness and binding nature of LOI dated 30.3.2015 by stating that the terms and conditions for period of supply from 1.4.2015 to 30.6.2015 (agreed under LOI dated 30.3.2015) shall remain unchanged.

(g) The contention of the Petitioner that JPL has cheated GEPL by inducing GEPL to agree to a full and final settlement on the pretext of revised tariff of Rs. 2.60/kWh and thereafter terminating the LOI dated 18.8.2015 even after accepting the payment of Rs. 12 crore is not correct. The settlement recorded in the letter dated 18.8.2015 only relates to the outstanding dues pertaining to the power supplied under LOI dated 30.3.2015, which was accepted by GEPL and according to which GEPL had to pay Rs. 12 crore upon issuance of the amended LOI, followed by another Rs. 12 crore by 20.9.2015, post-dated cheques by 20.9.2015 for the balance outstanding amount for the power supplied till 30.6.2015, surcharge on the outstanding dues and extend the BG. Therefore, the payment of Rs. 12 crore cannot in any manner be considered as the full and final settlement of the outstanding dues, as it was paid by GEPL as partial payment of outstanding dues under the LOI dated 30.3.2015, which is independent of LOI dated 17.9.2014 and 18.8.2015.

(h) The contention of GEPL that the payment of Rs. 12 crore by GEPL on 19.8.2015 was the full and final payment qua the outstanding dues is completely false and opposed to the terms recorded in letter dated 18.8.2015.

(i) With regard to contention of GEPL that JPL upon receiving the payment of Rs. 12 crore unilaterally withdrew/ terminated the LOI dated 18.8.2015, the Petitioner has submitted that LOI dated 18.8.2015 was issued pursuant to the assurance given by GEPL to clear its outstanding dues pertaining to LOI dated 30.3.2015. However, GEPL on 19.8.2015 rescinded from its commitment of clearing the outstanding dues by stating difficulties in implementing the terms and conditions agreed under the LOI dated 18.8.2015 and further requested JPL to amend the disbursement dates of payment. Such unilateral conditions proposed by GEPL were not acceptable to JPL and demonstrated malice on the part of GEPL to further coerce JPL apart from non-payment of past dues. Further, GEPL had failed to return the duly signed and acknowledged copy of the LOI and also failed to commence the power off take w.e.f. 1.9.2015. Therefore, due to said failures and sudden unilateral change of stance by GEPL, JPL was constrained to withdraw/ terminate the LOI dated 18.8.2015 vide its letter dated 9.9.2015.

(j) The contention of GEPL that it had to procure power at rate higher than what it was procuring from the Petitioner and hence suffered a lot is not only false but is known to be false as is proved by GEPL's own documents including letter dated 11.6.2015 and 22.6.2015 wherein GEPL sought a reduction of JPL's tariff on the ground that price of power was continuously falling due to market conditions. In a situation the purported claim of GEPL that market conditions were leading to lower prices as against the rates agreed in LOI

dated 30.3.2015, GEPL cannot at the same time claim that it purchased power at higher rates.

(k) The outstanding amount qua the power supplied under the LOIs dated 17.9.2014 and 30.3.2015 were never disputed by GEPL. GEPL vide its letters dated 27.3.2015, 16.4.2015 and 16.6.2015 provided its unequivocal commitment to pay the outstanding amount to the Petitioner.

61. GEPL has submitted the following on merits of the case:

(a) It entered into an agreement with the petitioner for purchase of power to the extent of 150 MW for the period from 1.10.2013 to 30.9.2014 in terms of LOI dated 28.6.2013; for supply of 100 MW of power for the period from 1.10.2014 to 31.12.2014; and for supply of 125 MW of power from 1.1.2015 to 31.3.2015. A dispute with respect to the applicable tariff for supply of power under LOI dated 17.9.2014 arose between the Petitioner and GEPL as the tariff was unviable. Therefore, GEPL discussed with the Petitioner to re-negotiate the tariff as applicable under LOI dated 17.9.2014. Subsequently, the Petitioner issued another LOI dated 30.3.2015 for supply of 125 MW power for the period from 1.4.2015 to 30.9.2015 at a higher rate, which was not signed and accepted by GEPL on account of ongoing negotiations between them pertaining to tariff. As per assurance of the Petitioner to consider reverting back to the contracted tariff of Rs. 2.60/kWh (the rates mentioned under LOIs dated 17.9.2014 and 30.3.2015 were higher), negotiations were taking place between the Petitioner and GEPL.

(b) While the negotiations were taking place, GEPL continued to source power from the Petitioner on the assumption that the Petitioner would revert to the agreed tariff of Rs. 2.60/kWh and accordingly made payment to the Petitioner.

The Petitioner agreed to supply power to GEPL from April 2015 to September 2017 vide letter dated 27.3.2015 subject to GEPL furnishing adequate payment security and bank guarantees. In response, GEPL agreed to put in place a payment security mechanism including six post-dated cheques and two Bank Guarantees of Rs. 9 crore and Rs. 3 crore dated 31.3.2015. Subsequent to letter dated 27.3.2015, the Petitioner issued LOI dated 30.3.2015 to GEPL for supply of 125 MW power from 1.4.2015 to 30.9.2015 which was not accepted by GEPL and the power was being procured by GEPL at Rs. 2.60/kWh on best efforts basis. Denial of the Petitioner to revise tariff was not the final stand of the Petitioner as is evident from a perusal of the communications dated 22.6.2015, 21.7.2015, 6.8.2015 and 13.8.2015 sent by GEPL and the e-mail dated 7.8.2015. The said communications demonstrate the fact that the tariff which would be applicable for the months of April 2015 to June 2015 was under negotiation. Therefore, the power supplied during the said intervening periods was done on ad-hoc basis and that the tariff for supply of power was kept open for negotiations. GEPL vide letter dated 22.6.2015 informed the Petitioner that since the LOI dated 30.3.2015 has not been accepted or finalised, the same was *non-est* and *void-ab-initio*. GEPL vide its letter dated 21.7.2015 requested the Petitioner to reduce tariff to Rs. 2.60/kWh.

(c) Thereafter, GEPL vide its letter dated 6.8.2015 recorded that the Petitioner during the negotiations and meeting held on 4.8.2015, agreed to change the tariff to Rs. 2.60/kWh for a period which included the period of April 2015 to June 2015. The Petitioner vide its email dated 7.8.2015 informed GEPL that it was willing to discuss the proposed amendment for charging the tariff of

Rs. 2.60/kWh qua LOIs dated 17.9.2014 and 30.3.2015 and requested to depute the representatives to discuss the amendment proposed in the letter dated 6.8.2015. Therefore, the same demonstrates that the Petitioner was agreeable to a discussion on revision of tariff for period from 1.4.2015 to 30.6.2016, which included the period from April 2015 to June 2015.

(d) On 17.8.2015, the Petitioner wrote a letter to GEPL whereby a revised LOI was issued proposing to supply power for the period from 1.9.2015 to 31.3.2016 at Rs. 2.60/kWh. The Petitioner and GEPL executed final settlement dated 18.8.2015 and all the past disputes between the parties ended and merged into the settlement. Therefore, the Petitioner could raise and form the basis of its claim as per the terms agreed between the parties in the settlement dated 18.8.2015. As per the said settlement, GEPL agreed to pay previous dues at Rs. 2.90/kWh till June 2015 conditionally and in return for the Petitioner agreeing to supply power at Rs. 2.60/kWh and Rs. 2.67/kWh for the period from 1.9.2015 to 31.3.2016 to compensate the GEPL subject to the Petitioner complying with the terms of the agreement dated 18.8.2015. Subsequently, on 19.8.2015, GEPL made payment of Rs. 12 crore to the Petitioner.

(e) However, the Petitioner on 9.9.2015 terminated the settlement dated 18.8.2015 on the ground that GEPL has not provided to the Petitioner with signed and acknowledged copy of the LOI dated 18.8.2015 and alleging that GEPL delayed scheduling of power from the Petitioner, when the Petitioner knowingly accepted the payment of Rs. 12 crore and the BG amount of the same amount. Therefore, the Petitioner deliberately lured GEPL into executing the full the final settlement dated 18.8.2015.

(f) Aggrieved by the above conduct of the Petitioner, GEPL filed CS (comm) No. 174/2016 before the Hon`ble High Court of Delhi. However, the learned Single Judge dismissed the said suit on the ground that it had no jurisdiction. Aggrieved by the above dismissal of the Civil Suit, GEPL preferred an appeal before the Division Bench of the Hon`ble Delhi High Court and vide order dated 6.10.2015, the same was remanded back to the Learned Single Judge which is pending for adjudication.

(g) The contention of Petitioner that the outstanding dues of Rs. 24.90 crore and the alleged delayed payment surcharge amounting to Rs. 10.05 crore has been wrongfully withheld by GEPL, which is over and above the trading margin, is fundamentally not correct. The Petitioner has very conveniently forgotten that GEPL has made a claim of damages on account of wrongful and arbitrary termination of the LOI dated 18.8.2015 by the Petitioner which resulted in paying much more for the power from third parties on account of renegeing from commitments by the Petitioner. Therefore, the contention of the Petitioner qua trading margin is wrong. The above damages cannot at all be made a part of trading margin, as the said damages are a contractual entitlement of the GEPL in terms of Sections 73 and 74 of the Indian Contract Act, 1872, and are outside the entitlement to trading margin.

(h) With regard to GEPL prayer regarding post-dated cheques, GEPL deleted the said prayers as the cheques were never honoured, and that qua the same separate proceedings have been initiated by the Petitioner against GEPL and its officials, under Section 138 of the Negotiable Instruments Act, 1881.

Analysis and Decision on Merit of the case

62. We have considered the submissions of the Petitioner and GEPL. 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 Letters of Intent (LOIs) for supply of power. The LOIs dated 17.9.2014, 30.3.2015 and 18.8.2015 were for supply of power for the period from 1.10.2014 to 31.3.2015, from 1.4.2015 to 30.9.2015 and from 1.9.2015 to 31.3.2016 respectively. Disputes have been raised by parties as regards billing, payment, tariff, payment security, non-signing of LOIs, non-acceptance of LOIs, negotiations as to tariff revision, bouncing of cheques, non-supply of power, cancellation of LOIs and so on. Due to these disputes, the supply of power in real sense did not take place for the actual duration as in the LOIs. The LOIs contain *inter-alia* terms and conditions for supply of power with regard to the payment of bills. Clause 8 of the LOIs provides 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 LOIs dated 30.3.2015 and 18.8.2015. 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.

63. 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 Rs. 44.70 crore. The Respondent made a payment of Rs. 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 Rs. 12 crore valid up to 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 Rs. 13,80,42,556/- towards balance outstanding dues for the power supplied pursuant to LOI dated 17.9.2014. We note that there are claims and counter-claims as regards acceptance of LOI dated 30.3.2015. The parties have also conflicting claims as regards negotiations for revisions of tariff under the LOI dated 30.3.2015. We also note that subsequently another LOI was issued by the Petitioner on 18.8.2015. On 9.9.2015, the Petitioner withdrew the LOI dated 18.8.2015 stating that GEPL had not provided to the Petitioner with signed and acknowledged copy of the LOI dated 18.8.2015 and also alleging that GEPL delayed scheduling of power from the Petitioner. Thereafter, the Petitioner presented two cheques dated 28.9.2015 issued by the Respondent which were returned by the bank with the remarks "payment stopped by drawer". Thereafter, the Petitioner encashed the bank guarantee of Rs.12 crore on 29.9.2015. On 28.10.2015, the Petitioner presented another two cheques dated 28.10.2015 for encashment which were returned on 28.10.2015 with the remarks "cheques stopped by drawer".

64. We notice that the present matter revolves around three LOIs dated 17.9.2014 (for supply of power from 1.10.2014 to 31.3.2015), dated 30.3.2015 (for supply of power from 1.4.2015 to 30.9.2015) and 18.8.2015 (for supply of power from 1.9.2015 to 31.3.2016). The Respondent did not make full payment to the Petitioner against supply of power as regards LOI dated 17.9.2014. There were negotiations between the parties and a few post-dated cheques were given to the

Petitioner against balance payments followed by bank guarantee by the Respondent. The Petitioner issued next LOI dated 30.3.2015. The Petitioner and Respondent have conflicting claims as regards acceptance of this LOI by the Respondent. We further notice that the Respondent sent letter of negotiation of tariff under LOI dated 30.3.2015 sometime in June 2015. The Petitioner has claimed that no such negotiation was envisaged between the parties and purportedly it rejected any such offer of negotiation for downward revision of tariff. The power supply envisaged under the LOI was up to 30.9.2015, but it materialized only up to 30.6.2015 due to difference of the parties as regards tariff. However, the parties concluded another contract and the Petitioner issued an LOI dated 18.8.2015 for supply of power from 1.9.2015 to 31.3.2016. The power could not be supplied under this LOI as the Respondent sought amendment for the period of power supply from 1.10.2015 to 30.4.2016 (as against 1.9.2015 to 31.3.2016 as per LOI) on account of non-availability of NoC from MSEDCL. The Petitioner withdrew the LOI dated 18.8.2015 stating non-scheduling of power by the Respondent and on account of not providing signed copy of the LOI.

65. There are contractual issues between the parties as regards the three LOIs and the parties are before the Hon'ble Delhi High Court for adjudication. However, apart from contractual disputes, we have noticed a few aspects in conduct of the Respondent as regards a trading licensee. We have discussed earlier that as per judgment of APTEL, the word "enquiry" has not been defined under the Act. It has been inferred that "enquiry" means the "act of seeking information" or "fact finding". The judgment also states that there is no time limit provided under Section 19 of the Act. The judgment further provides that the materials collected in such enquiry have

to be confronted to the licensee under Section 19(3) of the Act. Even GEPL in para 7 of its written submission has submitted that “*an enquiry can be conducted by a Commission for the purposes of revocation of licence through analysing documents and information which are available....*”. It has also been held that if the notice of revocation is issued after conducting enquiry and the licensee is made aware of it, compliance of Section 19 is satisfied. In the above background, we now proceed to analyse the documents submitted by the parties to see whether a case is made out against the Respondent under Section 19 of the Act.

66. The provisions of Regulation 7 of the Trading Licence Regulations is repeated below:

“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.”*

67. As per provisions of Regulations 7(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.”* We observe that the Respondent has not made timely payment to the Petitioner against LOI dated 17.9.2014 that involved supply of power from 1.10.2014 to 31.3.2015. As against billed amount of Rs. 44.70 crore, only Rs. 20 crore had been paid. Towards end of the contract on 27.3.2015, a few post-dated cheques were handed over to the Petitioner. Thereafter, two Bank Guarantees were issued by the Respondent in favour of the Petitioner. Subsequently, few more post-dated cheques were handed over on 16.4.2015 to the Petitioner. From these, it emerges that the Respondent neither made timely payment to the seller for supply of power nor had established a letter of credit. From the way disputes have been raised by

either parties, it is not clear if there was any mutual agreement related to payments to the seller. Though the Respondent handed over post-dated cheques against due payment, we notice that these cheques could be encashed only over a period of nearly 7 months after the contract was over (last two post-dated cheque was dated 28.10.2015). By no stretch of imagination, the Respondent can be said to have made timely payment to the seller Petitioner. In our view, *prima facie* this is clear violation of provisions of Regulation 7(h) of the Trading Licence Regulations.

68. Regulation 7(i) of the Trading Licence Regulations provide that:

“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.”.

In case of LOI dated 30.3.2015 (for scheduling of power from 1.4.2015 to 30.9.2015) issued by the Petitioner, we note that the Respondent has, as late as 16.6.2015, claimed that it had not accepted the LOI and that negotiations as regards downward revision of tariff were ongoing. The Petitioner has submitted that there was no scope for negotiations on tariff and vide its letter dated 17.6.2015 rejected the demand of the Respondent. In our opinion, scheduling a transaction without entering into an agreement on pretext of negotiations for downward revision of tariff as late as almost two and a half months (in case of LOI dated 30.3.2015) after power

scheduling had begun is violative of the provisions of Regulation 7(i) of Trading Licence Regulations. Similarly, the records reveal that the Respondent did not sign an agreement before the scheduled date of power supply in case of LOI dated 18.8.2015. However, we also notice that no power was supplied under this LOI as the Petitioner withdrew the LOI on the ground that the Respondent had not returned the signed copy of acceptance of the agreement.

69. Regulation 7(c) of the Trading Licence Regulations provide that “*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.*” As per the above Regulation 7(c), the Respondent cannot charge any amount exceeding the trading margin fixed by the Commission. The Commission has fixed this margin as 4 paise or 7 paise per kWh, as the case may be, depending upon tariff. The Respondent has stated that it kept on negotiating with the Petitioner for downward revision of tariff to Rs. 2.6/kWh for supply of power in terms of LOI dated 30.3.2015. We fail to understand the rationale for Respondent’s insistence on downward revision of tariff when it had already started supply of power to the buyer. The Respondent cannot charge any amount from the Petitioner other than the trading margin for inter-State trading of electricity fixed by the Commission. No details have been furnished by the Respondent as to the tariff charged by the Respondent from the buyer for us to arrive at a conclusion if the Respondent has charged any amount over and above the trading margin fixed by us under the Regulations. But entering into negotiations after issue of LOI does not give us the confidence that the Respondent has complied with this provision of the Trading Licence Regulations.

70. 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 uncertainties in the electricity market that may shake the confidence of the generating companies, distribution licensees and consumers thereby affecting 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.

71. We have observed above that the Respondent has not ensured timely payment of dues to the seller and thereby prima facie violated provisions of Regulation 7(h) of the Trading Licence Regulations. The Respondent did not enter into an agreement before scheduling of power as per LOI dated 30.3.2015 in contravention to the provisions of Regulation 7(i) of the Trading Licence Regulations. There is no clarity as to whether the Respondent has charged over and above the trading margin fixed by the Commission in contravention to the provisions of Regulation 7(c) of the Trading Licence Regulations. In light of the foregoing, we are prima facie of the view that the Respondent has violated the provisions of Regulation 7 of the Trading Licence Regulations. However, in the interest of justice, the Commission has decided to undertake further enquiry for its satisfaction that the Respondent has acted in contravention to the provisions of the Trading Licence Regulations before starting any proceedings against the Respondent for revocation of licence under Section 19 of the Act.

72. We, therefore, decide as under:

(a) In order to ascertain as to whether the Respondent has complied with provisions of Regulation 7(c) of the Trading Licence Regulations as regards LOI dated 30.3.2015 of the Petitioner, the Respondent shall furnish a copy of agreements and other relevant documents with the buyer(s) of such power; details of payments made by the buyer(s); payments received from the Petitioner; and an affidavit stating that it has not charged any amount over and above the trading margin fixed by the Commission.

(b) In order to ascertain as to whether the Respondent has complied with provisions of Regulation 7(h) of the Trading Licence Regulations, we direct the Respondent to furnish details of trading activity undertaken by it in the last three financial years i.e. 2016-17, 2017-18 and 2018-19. We also direct the Respondent to place on record a statement in respect of all the sellers (except the Petitioner) as to the payments made to them supported by an affidavit to the effect that it has made timely payments to them and that no payments are due, and no default has been made in making any payment in connection with the transactions made by it.

(c) In order to ascertain as to whether the Respondent has complied with the provisions of Regulation 7(i) of the Trading Licence Regulations, we direct the Respondent to place on record the agreements entered by it with all the seller(s) (except the Petitioner) from whom power has been purchased by the Respondent along with the dates when such power started getting scheduled.

73. The Respondent shall furnish the above information as soon as possible and in no case later than 30 days from the date of issue of this Order. In the event, no information is received from the Respondent within 30 days of issue of this order, action will be initiated based on available information in terms of Section 19 of the Act read with Regulation 14 and 14C of the Trading Licence Regulations.

74. We also direct that a copy of this Order be served upon the Power Exchanges. The Power Exchanges are in turn directed to submit details of trading activity undertaken by the Respondent on the respective Exchanges. Any complaint received from any seller or buyer shall also be brought to the notice of this Commission along with action taken by the Exchanges. The Power Exchanges are further directed to confirm that the Respondent has not defaulted in making any payment in connection with the transactions made by the Respondent Global Energy Private Limited and no adverse information regarding the conduct and operation of the licensee has come to the notice. The Power Exchanges shall submit all relevant information within two months of issue of this Order.

75. Petition No. 211/MP/2016 is disposed of in terms of the above.

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

Sd/-
(P.K. Pujari)
Chairperson