



Order Sheet

WPC No. 1927 of 2016Jindal Steel & Power Ltd. **Versus** Chhattisgarh State Electricity Regulatory Commission

10/08/2016	Heard Shri Jayant Bhushan, Sr. Advocate with Miss Divya Chaturvedi, Shri Bhaskar Payashi, Miss Shikha Pandey and Shri Sandeep Bhuraria, Advocates for the petitioners, Shri Adhiraj Surana, counsel for respondent No.1 and Shri Kanak Tiwari, Sr. Advocate with Shri Varun Sharma, Advocate for respondents 2 and 3. Learned Senior Counsel appearing for the petitioner would argue that payment of the electricity supplied to respondent No.2 has been made in the year 2011-12 & 2012-13 in accordance with the terms and conditions and pricing decided by the Chhattisgarh State Electricity Regulatory Commission vide its order dated 30.4.2010. The order has attained finality as it was not challenged by any of the concerned party. The payments having been made perfectly in accordance with the order. When respondent No.2 moved a truing up petition before respondent No.1 for its tariff for consumers, an order was passed on 12.6.2014 with an observation that CSPDCL has ignored the quality of power (unstable) supplied by JSPL and entered in power purchase agreement for such power. The Commission has further observed that burden of negligence of the CSPDCL should not be passed on to the consumers and hence it approved minimum base rate of Rs.1.50 per kWh as part of power purchase cost. Respondent No.2 preferred appeals before the Appellate Tribunal at New Delhi. After the dismissal of the	



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appeal, the impugned demand has been raised and thereafter the respondents are denying issuance of NOC for availing open access by the petitioner.

It is argued that once the PPA has attained finality, there cannot be any retrospective demand for return of the amount already paid to the petitioner. It is also argued that the appellate order has been passed in absence of the petitioner, therefore, there is violation of principles of natural justice and moreover, there is no order by the Commission or by the Appellate Tribunal for recovery of the amount from the petitioner.

Shri Kanak Tiwari, learned Senior Counsel appearing for respondents 2 and 3 as also Shri Surana, learned counsel appearing for respondent No.1 would object to the prayer for grant of interim relief. Shri Tiwari would submit that necessary consequence of the impugned order is to raise demand from the petitioner because the Appellate Tribunal has emphatically held that the power supply being non-firm, it was contrary to the PPA which prescribes that the power supply has to be firm round the clock.

Considering the entire fact situation of the case, it is directed that the subject demand raised by the respondent No.2 shall remain in abeyance and the respondent No.3 shall not deny open access for non-payment of the subject demand.

As prayed, post it on 29th August, 2016.

In the meanwhile, the respondents may file their counter affidavit.

Certified copy as per rules.

Barve/
Gowri

Sd/- Judge
Prashant Kumar Mishra