Due to inadvertence, the uncorrected copy of the order which was uploaded was taken out/ removed and the corrected copy of the order is uploaded.

Sd/-
(G. Mohapatra)
Member

Sd/-
(U. N. Behera)
Chairperson

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO. 4, CHUNOKOLI, SHAILASHREE VIHAR,
BHUBANESWAR-751021
****

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

In the matter of: **Proceeding on remand by the order dated 30.11.2021 of the Hon'ble APTEL passed in Appeal No.186 of 2020.**

AND

Case No. 12/2015

M/s. Jindal Stainless Limited, Kalinga Nagar, Jajpur …… Petitioner
Vrs.
E.E. (Elect.), JRED, NESCO Utility, Jajpur Road ..... Respondent

In the matter of: **An application under Sec. 142 of the Electricity Act, 2003 for non Compliance of OERC Order in Case No. 92/2013 & 3/2014 dt.20.02.2015.**

AND

Case No. 14/2015

M/s Jindal Stainless Limited, Kalinga Nagar, Jajpur …… Petitioner
Vrs.
E.E. (Elect.), JRED, NESCO Utility, Jajpur Road ..... Respondent

In the matter of: **An application under Sec. 86 (1) (f) & (k) of the Electricity Act, 2003 for challenging the action taken by NESCO to execute agreement under Large Industry category, when the applicant is a Captive generating Plant coming under the category of "Industries**

owning Generating Station and captive Plant availing Emergency Supply" as per Regulation 80(15) of OERC Distribution (Condition of Supply) Code, 2004.

AND

Case No. 12/2018

NESCO Utility …… Petitioner

Vrs.

M/s. Jindal Stainless Limited …..... Respondent

AND

In the matter of: **An application under S.94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 (1) of the OERC (Conduct of Business) Regulations, 2004 for review of Order dated 26.02.2018 of the Commission passed in Case Nos. 12 & 14 of 2015.**

Case No. 26/2018

M/s. Jindal Stainless Limited …… Petitioner

Vrs.

NESCO Utility & Others …..... Respondents

In the matter of: **An application under S. 142 & 146 of the Electricity Act, 2003 for non-compliance of the directions of the Commission passed in Case Nos. 12 & 14 of 2015.**

For Petitioner: Shri Gopal Choudhury, Sr. Advocate and Shri Hitendra Ratha, Advocate on behalf of M/s. JSL in Case Nos.12 & 14 of 2015 and 26 of 2018.

For Respondents: Shri Ananda Shrivasatav, Advocate, Arjun Jain, Sr. Advocate and Shri Sajan Poovyya, Sr. Advocate on behalf of TPNODL (the then NESCO Utility).

Date of Hearing: 28.12.2021 **Date of Order: 13.01.2022**

This proceeding is consequent upon judgement dated 30.11.2021 of the Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal No.186 of 2020 wherein the Hon'ble APTEL has remanded the matter back to this Commission with a direction to determine classification as to whether M/s. Jindal Stainless Ltd, Kalinga Nagar, Jajpur Road (for short, "JSL"), The Petitioner falls under the category of "Emergency Supply to CGP" under Regulation 80 (15) of the OERC Distribution (Conditions of Supply) Code, 2004 (herein after referred to as "the Supply Code") or "Large Industry" under Regulation 80 (10) of the Supply Code and thereafter to pass

appropriate order with regard to tariff to be imposed on the Petitioner - M/s. Jindal Stainless Ltd.

2. The Petitioner, M/s. Jindal Stainless Ltd. (JSL) is having an integrated Steel manufacturing plant at Kalinga Nagar Industrial Complex, Danagadi, Jajpur Road in NESCO Utility area of supply and was availing power from NESCO Utility w.e.f. 01.09.2005 under Large Industry tariff category. After commissioning of its CGP (2x125MW), M/s. JSL executed an agreement with NESCO Utility on 1.7.2008 for a period of two years under 'Emergency supply to CGP' category for a demand upto 50 MW. After expiry, the agreement was renewed on 13.11.2010 for a further period of two years retrospectively from the effective date 01.07.2010 upto 30.06.2012. As per the special clauses of the agreement, JSL would take supply upto a demand of 50MW (as allowed by OPTCL), but not exceeding 30MU per annum with a cap of 4MU in one month. In case the drawl of JSL exceeds 4MU in any month, then energy bill for that month would be done on normal Large Industrial tariff with contract demand 50MW. Therefore, the petitioner M/s. JSL is a consumer under the category of emergency supply to CGP coming under Regulation 80 (15) of OERC Supply Code, 2004 and has been paying tariff as per the bill for "Emergency Supply to CGP". But, the Utility unilaterally, arbitrarily and without any notice started raising bills to M/s. JSL on the basis of LI tariff category in the month of September, 2012 with arrear bills from April, 2012 and issued disconnection notice on 29.09.2012, although JSL has not violated any condition of Supply Code.

3. According to the Respondent – NESCO, the Petitioner is importing power irrespective of the running status of CGP as there is export of power in the corresponding DIP which shows import of power at the same time. That means the Petitioner is importing power concurrently while exporting in the same DIP. This violates the Regulation 80 (15) of the Supply Code, 2004. The category of 'Emergency supply to industries owning CGP relates to supply of power to industries with generating station including captive power plants only for the start up of the unit or to meet their essential auxiliary and survival requirement in the event of failure of their generating capacity. Therefore, the drawal pattern of power by the Petitioner comes under the unauthorised use of electricity as provided under Section 126 (6) (b) (iv) of the Act. The Respondent keeping the past drawal in view has only claimed a demand for differential revenue intimating the consumer that the billing from April, 2012 to July, 2012 has been revised under LI category

4. Feeling aggrieved and dissatisfied with the decision of the Respondent – NESCO, treating the petitioner JSL under "Large Industry" Category, the Petitioner approached the learned GRF, Jajpur Road and the learned GRF decided the case in favour of the Respondent – NESCO Utility. Being aggrieved, the Petitioner – M/s. JSL moved the Ombudsman-II, Bhubaneswar.

5. With the above context, this Commission delved into the order dated 15.11.2012 passed by the learned GRF at Jajpur Road in Consumer Complaint No.334 of 2012 along with the order dated 22.11.2013 passed by the learned Ombudsman (II) in Consumer Representation Case No. Omb(II) N-72 of 2012.

6. The Learned GRF in CC No. 334/2012 dated 30.10.2012 had directed as follows:

"Heard both the parties. After careful consideration of the case records, returns and submissions made available before us, we are of the opinion that the revised bills raised by the Opposite Party from April/2012 to July/2012 along with current bills from August/2012 i.e. demand charges (80% of CD or MDI whichever is higher) energy charges and other charges as applicable are justified and the Petition filed by the complainant is dismissed herewith. Accordingly, the complainant is directed to release the claim of the Opposite Party as aforesaid. Regarding execution of agreement it is open to both the parties as agreed between them."

7. As stated earlier, feeling aggrieved and dissatisfied with the above order passed by the learned GRF, Jajpur Road, the Petitioner – JSL made a representation before the learned Ombudsman for revision of their bills from April 2012 onwards in accordance with the tariff, under the category of "Emergency Supply to CGP" and to renew the agreement under Regulation 80(15) of the Supply Code 2004 and Learned Ombudsman-II passed the following order in Consumer Representation No.72 of 2012 which is in support of JSL and is in supersession of the order of the learned GRF.

"In the present case the nature and purpose of power supply is contradicting to the recorded/calculated data of the meter and the terms of the agreement so made between the parties. During the course of hearing the Respondent has admitted that the Petitioner has not violated the capped units of 4 MU/month and 30 MU/annum but have violated to the permitted 50 MW of Contract Demand. This Forum is not satisfied with the calculation of the total Contract Demand of both feeders just by adding the magnitude of the KVA element without considering it's direction. Hence to my opinion the Petitioner has not violated the agreement term to the extent of KVA demand so as to encourage the licensee in billing with LI category. On the other hand the licensee have not followed Regulation 82 of OERC Supply Code, 2004 correctly for re-classification of tariff category. The existing agreement (valid up to 30.06.2012) is also not proper in view of tariff categorisation and at the same time has not been got approved from the Hon'ble Commission, being considered as a special agreement. To the question of legality of the agreement for it's period and it's

void abinitio this Forum is not competent to pass any comment and the said matter can be dealt in any of the appropriate Forums. For renewal of agreement both parties should conclude to a tariff category under regulation in force, basing on the nature and purpose of power supply."

8. However, when bills were not settled and new agreement was not made JSL approached this Commission vide Case No. 92/2013 for non-compliance of the order dated 22.11.2013 passed by Ombudsman-II. M/s. JSL filed another case before this Commission bearing Case No. 3/2014 challenging the action of NESCO for not renewing the agreement and/or executing agreement under the emergency supply category. The main contention of JSL was that the agreement under emergency supply to CGP should be executed between the parties. After hearing the parties the Commission in their common order in Case Nos. 92/20213 and 3/2014 dated 20.02.2015 held that the order of the Ombudsman has attend finality and that NESCO shall bill JSL as a normal emergency supply category as per Regulation 80 (15) of OERC Distribution (Condition of Supply) Code, 2004 during the validity of the existing agreement since the existing agreement has to conclude on expiry. The Commission had directed NESCO to revise the bill in accordance with the order of Ombudsman-II.

9. While the matter stood thus, the petitioner subsequently approached this Commission in Case No.12 & 14 of 2015, the first invoking its jurisdiction under Section 142 of the Electricity Act, 2003 alleging non-compliance of the order of this Commission dated 20.02.2015 in Case No.92/2013 and 3/2014 and the latter being a petition under Section 86 (1) (f) and (k) of the Electricity Act, 2003 challenging action taken by the Respondent NESCO Utility requiring the Petitioner-JSL to execute an agreement under LI category when the latter was claiming the benefit of the Emergency Supply Category under Regulation 80(15) of the Supply Code. During the pendency of these cases the Commission sent a fact finding team to the field to ascertain the modalities of billing during disputed period. The fact finding team in their report dated 27.05.2017 stated as follows:

a. *The team discussed the matter in detail with the DGM (O&M) in charge of the Grid Sub-station at Duburi and their officials on duty, It is observed that M/s. JSL is drawing power from 400/220 KV Grid sub-station of OPTCL at Duburi through two numbers of 220 KV feeders, The energy drawal is being recorded in a summation meter installed on 08.12.2015 and billing is being made at present based on the readings of this meter. Further individual meters, based on the reading of which billing was being made earlier i.e. prior to December, 2015 still exist in each feeder. Data/information regarding SMD of the drawal*

by M/s. JSL through these two feeders was not available at Duburi grid sub-station records. At M/s. JSL switchyard control, drawal is being recorded through individual meters in both the feeders without any summation meter. Thereafter, we had a detailed discussion with the concerned officials of M/s. JSL and NESCO Utility in the office chamber of SE, Jajpur Road Electrical Circle. The views of both the parties during the discussion are taken into record.

b. *The representative M/s. JSL stated that the emergency power supply agreement was neither terminated nor renewed by NESCO Utility and bills were raised considering M/s. JSL as large industry having CD of 55.55 MVA without any regulatory provision. Hence, the emergency power supply agreement has continued till July, 2015 and from August, 2015, only the new agreement under LI category came into existence. The consumer meter was installed on 08.12.2015 which was the effective date of actual and correct billing under LI category. M/s. JSL has never violated the terms and conditions of emergency power supply agreement.*

c. *Representatives of NESCO Utility have stated that the bills of the consumer have been revised up to June, 2012 based on the order of the Ombudsman-II. In compliance to the directions of the Commission, the utility has submitted all relevant documents to establish that the drawal pattern of the consumer is contradicting Regulation 80 (15) of OERC Distribution (Conditions of Supply) Code, 2004, where the category industry owning generating station/Captive Power Plant (CPP) availability for emergency supply is provided. As per drawal pattern of the consumers it comes under large industries. The utility stated that the Commission shall issue directions for regularization of the billing period from July, 2012 to July, 2015 inviting reference to the point 8 of order dated 4.07.2015 of OERC.*

d. *From the submissions of both the parties we observe that the agreement for "Emergency supply to CGP" was valid till 30.06.2012. After the expiry of the said agreement, power supply to M/s. JSL has been continued without any valid agreement. Both the parties have not initiated any action for renewal of agreement or termination of the agreement. However, a fresh agreement was executed on 21.08.2015 between the parties under large industry category, effective from 01.08.2015 with a CD of 12 MVA.*

e. *As per the order of the Ombudsman/Commission, NESCO Utility has revised the energy bill up to 30.06.2012 as per the previous agreement for emergency power supply. Both the parties are not having any dispute as far as energy charge is concerned. Since there is no valid agreement from July, 2012 to July, 2015, the dispute on billing was raised regarding the classification of consumer category. A fresh agreement was executed under LI Category which is effective from August, 2015.*

f. *In this connection, GRIDCO Limited was asked to submit the data/information of month wise SMD for the drawal by M/s. JSL through both the feeders for the period from April, 2012 to 8th December, 2015 with time synchronisation. We analyse the said data received from GRIDCO Energy Billing Centre along with the submission/views of NESCO Utility and M/s. JSL. As per the OERC Distribution (Condition of Supply) Code, 2004 the category of supply depends upon the nature & purpose of supply. As per Regulation 80 (15), the emergency power supply to a CGP is limited to*

survival requirement/start-up of the unit in the event of failure of their generating capacity. But as far as the drawal pattern of the M/s. JSL is concerned, it is on regular basis not limited to its survival requirement. We are also of the same opinion in line with the findings/ observations of the Ombudsman that the nature and purpose of power supply is contradicting to the recorded/calculated data of the meter and the terms of the agreement so made between the parties. Further, both the parties have not followed the law correctly in taking appropriate steps for execution of fresh agreement after the period of agreement is over.

g. ***In the instant case, since the power has been drawn by M/s. JSL on continuous basis and inferred to be used as motive force for its industrial production, the category of the supply may not be classified under the category of "industries owning generating stations and captive power plants availing emergency supply only". However, it could be classified under the category of "large industry"****, but there was no valid agreement exists between the parties during the disputed period for consideration of the contract demand for billing purpose and also no summation meter was available for ascertaining SMD and power factor of the power supply. In view of the above, any one of the following options may be considered by the Commission for resolution of the dispute between the parties.*

   i. *Deemed continuance of the old agreement of emergency supply till July, 2015. Or*

   ii. *The new agreement which was effective from August, 2015 may have retrospective effect from July, 2012. Or*

   iii. *The disputed period may be treated as drawal under LI category considering the SMD as submitted by GRIDCO. Or*

   iv. *Any other option as deemed fit and decided by the Commission."*

This fact finding report was brought on record in Case No 14/2015.

10. This Commission vide order dated 26.02.2018 disposed of both the Case Nos. vide 12/2015 and 14/2015 with the following order:

"15. We observe that the licensee has unilaterally proceeded on to bill the consumer from April, 2012 onwards in another category during currency of the prevailing agreement without following the procedure mentioned in the Regulations. The existing agreement at that point of time was not renewed due to disagreements over the category till 01.08.2015.

We are of the view that, once a procedure is prescribed for some actions in the statute, it has to be in that way only; not in the other way.

16. However, in accordance with the regulations, the final notice to change the category appears to have been issued to the petitioner-consumer by the licensee much later on 30.04.2015 and the agreement has been signed in the new agreed category w.e.f. 01.08.2015.

17 Therefore, considering all the factors mentioned above, we are of the opinion, that the transaction for the period from 01.07.2012 to 31.07.2015 should fall in the category of "Emergency Supply to CGP" under Regulation 80(15) of the Supply Code which existed on 30.06.2012.

18. We direct that the NESCO Utility shall raise bills on the petitioner immediately within 15 (fifteen) days of issue of this order in the category mentioned at Clause 17 above. Interim payments ordered by Commission and paid by petitioner shall be suitably adjusted in the bill. NESCO Utility is at liberty to charge DPS after expiry of the "due date of payment", if payment was not received in time."

11. After the aforesaid proceedings, the respondent M/s. NESCO Utility filed a Review petition in Case No.12/2018 seeking review of the order dated 26.02.2018 passed in case Nos.12 & 14 of 2015 which was rejected by an order dated 30.04.2018 by the Commission observing to the effect that :

xxx xxx xxx xxx

"11. Therefore, we do not observe/find any fresh evidence to agree with the petitioner on its application for review of the earlier order passed by the Commission. We find the petition, for review of the order dated 26.02.2018 passed in Case Nos. 12 and 14 of 2015, is devoid of any merit. As the cases have been decided after full consideration of the arguments made by the parties, the present review petition cannot be accommodated even in garb of doing justice or substantial justice to engage the Commission again to decide on the controversy already decided."

xxx xxx xxx xxx

12. Being aggrieved by the above order of this Commission, the Respondent-NESCO Utility, approached the Hon'ble High Court of Orissa in WP(C) No.13138 of 2019 and the Hon'ble High Court of Orissa vide their order dated 25.11.2019 directed the NESCO Utility to approach the APTEL as per Section 111 of the Electricity Act, 2003 for necessary redressal of his grievances holding that the order passed by this Commission is appellable and accordingly the Respondent-NESCO Utility knocked the door of the Hon'ble APTEL in Appeal No.186 of 2020 where-after Hon'ble APTEL after hearing both the parties has set aside the impugned order and remanded back the matter to the Commission with their direction to hear the matter afresh and pass necessary orders thereon. Relevant extract of the judgement is as follows:

"15. The learned counsel on all sides agreed that there is no standardised format prescribed for a notice in terms of Regulation 82 of Supply Code to be issued. The communications of November and December 2012, in our reading, substantially complied with all the pre-requisites of notice envisaged under Regulation 82. We must add here that it is the contention of the JSL, and we agree with the same, that its response to the said notices of November and December 2012 must also be kept in view. In our view, the Commission could and should not have overlooked this relevant part of the material before reaching a conclusion adverse to the claim of the Appellant about it having legitimately invoked the prerogative conferred upon it by Regulation 82 to re-classify JSL as a consumer under LI category instead of the Emergency Supply category for which the parties had executed the agreement.

16. We may also note here that it is the submission of JSL that there was no summation metering system available and the effect of this during the relevant period was also required to be examined by the State Commission to determine if JSL would fall under the category of large industry or not. We do not wish to express any opinion on this contention of JSL leaving it to be examined for its worth and effect on the main issue of reclassification by the Commission.

17. In the foregoing facts and circumstances, with the consent of the Appellant and the first Respondent, we set aside the impugned order, since it suffers from the vice of perversity, material documents having been overlooked. We remit the matter involving the issue of reclassification to the State Commission for a fresh decision. Needless to add, if the contentions of the Appellant about a case for reclassification under Regulation 82 of the Supply Code are upheld by the State Commission, it shall also proceed to examine as to how the differential in the applicable tariff for the period in question is to be determined and recovered, and issue all necessary directions in such regard as well.

18. The State Commission will hear all parties afresh, not feeling bound by the view taken earlier and pass the requisite order, in accordance with law expeditiously, preferably within three months of this Judgment. While the State Commission is awaited to render its fresh decision in terms of the above direction, neither side will take any precipitative action vis-a-vis the pending invoices issued by the Appellant and the proceedings taken out in that regard by JSL. The parties are directed to appear before the State Commission on 13.12.2021."

13. Be it mentioned here that during the pendency of the Appeal No. 186 of 2020 before the Hon'ble APTEL, this Commission by their vesting order dated 25.03.2021 in Case No. 9/2021 vested the utility of NESCO in the TPNODL w.e.f. 01.04.2021 under Section 21 of the Electricity Act, 2003. Therefore, the erstwhile NESCO utility is coloured now as TPNODL as far as the present proceeding is concerned.

14. As per directives of the Hon'ble APTEL, the Commission was required to pass the consequential order on the issue if the petitioner would fall under the category of Large Industry or not during the disputed period. Thus, the following are the issues for determination before this Commission to adjudicate the dispute.

(i) To which classification (consumer category) the Petitioner (JSL), would fall during the period from 01.07.2012 till 31.07.2015 (after expiry of the agreement in 2012) - as large industry under Regulation 80 (10) or emergency supply of CGP under Regulation 80 (15) of the code?

(ii) Whether, the respondent has taken action in compliance with the Regulation 82 of the Supply Code of 2004, under the facts and circumstances of the case or there has been any departure from it ?

(iii) Whether the drawal pattern of the JSL comes under large industries category as per Regulation 80 (10) or under the category of "Emergency Supply" to CGP, under 80 (15) of the Supply Code?

15. Since the three issues are more or less intertwined, for the sake of convenience, conjoint discussions on the points can be reasonably done for arriving at just conclusion.

There are certain facts admitted by the parties which need reflection. It is felt proper to mention here that admission in the pleadings giving rise to the orders is taken as admissions by the parties.

16. That the petitioner after installation of its Captive Generating Plant (CGP) had been availing Emergency Power Supply upto demand of 50 MW w.e.f. 01.07.2008, which was renewed from time to time for a period of 2 years and was continuing. The parties accepted and agreed that in case drawl exceeds 4 MU in any calendar month, the bill for that month will be done on normal Large Industry (LI) tariff with Contract Demand of 50 MW. The petitioner has entered into an agreement as a consumer under the category of Emergency Supply to CGP under regulation 80 (15) of the OERC Supply Code-2004. It is agreed between the parties that electric energy charges shall be claimed by the licensee based on the load survey conducted by the licensee, once in a month. It is admitted case of the parties that the licensee raised the bill against the petitioner under the Large Industry Tariff Category w.e.f. April-2012 to August-2012 on the basis of applicable energy charge basing on load factor as per RST order and demand charges (80% of the contract demand of 50 MW or maximum demand whichever is higher). Again the licensee in its notice for disconnection dated 29.09.2012 demanded Rs.7,50,36,625.00 as arrear energy bill. It is not disputed by the parties that licensee would verify the load pattern to ascertain to the extent of consumption by the petitioner. The start up power as is understood is just required only for start up of the unit or to meet their essential auxiliary and survival requirement in the event of the failure of their generation capacity and the consumer has agreed for a contract demand of 50 MW. It is not disputed by the petitioner that the load survey conducted by the licensee was not proper. Though, the petitioner has

disputed the demand made by the licensee, yet their contention is limited in view of agreement in terms of Regulation 80 (15) of the Supply Code, 2004. It is contended on behalf of the petitioner that the regulation 82 of the Supply Code, 2004 should have been invoked by the Respondent in order to make the claim. The Regulation 82 of the Supply Code, 2004 is reproduced below;

"Regulation 82. If it is found that a consumer has been classified in a particular category erroneously or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category or any order of reduction or enhancement of contract demand has been obtained, the engineer may reclassify him under appropriate category after issuing notice to him to execute a fresh agreement on the basis of the altered classification or modified contract demand. If the consumer does not take steps within the time indicated in the notice to execute the fresh agreement, the engineer may, after issuing a clear seven days show cause notice and after considering his explanation, if any, may disconnect the supply of power."

17. A careful reading of the aforesaid regulation leaves no room of doubt that even if there is an agreement between the consumer and the licensee classifying the consumer under Regulation 80 (15) of the Supply Code, 2004, the licensee can ask to categorise the consumer under L.I category as per Regulation 80(10) of the Supply Code, 2004 by taking recourse to Regulation 82 of Code, 2004, if at any time consumption of power is found exceeding the limit of that category or where the contract demand has been exceeded as found by the Engineer of the licensee during course of the load survey. It is seen that the licensee issued notice for the month of August-2012 and demanded arrear bill for April-2012 to July-2012 indicating higher energy consumption by the petitioner. This act on the part of the respondent licensee is in accordance with Regulation 82 of the Supply Code, 2004.

18. Power has been found drawn by the Petitioner - M/s. JSL, on continuous basis and from that it can be inferred that it was used as motive force for its industrial production. Therefore, the Fact Finding Committee, appointed by the Commission found that the category of the supply may not be classified under the category of "Industries owning generating stations and captive power plants availing emergency supply only". The said Committee had conducted the fact finding exercise in presence of the authorised engineering representative of the Petitioner and of the Licensee. The load survey report is affirmed by the findings of the team. The dump data analysis during April 2012 to July 2012 indicate that JSL had imported power, during the failure of its CGP. The Petitioner all through could not produce any information to

contradict the aforesaid facts and that his consumption was within the scope of Regulation 80(15).

19. It is true that despite clear cut information with the licensee and indifference by the petitioner, the former did not take recourse to disconnection of power supply to the petitioner's Unit. All the same, it cannot be lost sight of the fact that the petitioner has renewed the agreement in 2015, in terms of Regulation 80 (10) of the supply code 2004, while the matter was under dispute and the licensee had been claiming that the petitioner fell under the category Regulation 80 (10) of Supply Code, 2004. The petitioner had taken the matter before the GRF and against that order, he took the matter to the Ombudsmen-II, which was followed by other proceedings before this forum, Hon'ble High Court of Orissa and finally before the Hon'ble Appellate Tribunal for Electricity, while the notices by the respondent were in force.

20. The petitioner has also raised a point that between the period from 01.07.2012 to 31.07.2015, there was no agreement, whatsoever between the parties and therefore the respondent cannot make any claim. It is not disputed that the effective duration of the agreement dt13.11.2010 was between 01.07.2010 to 30.06.2012 and the next agreement came into being only on 21.08.2015, with the effective duration of five years w.e.f. 01.08.2015 to 31.07.2020. The parties have conceded that between 30.06.2012 to 01.08.2015, the petitioner has consumed the energy supplied by the Respondent. Notices dated 29.9.2012, 21.11.2012 and 20.12.2012 speak for themselves that there was continuation of power supply and it is not disputed that despite those notices, the respondent never disconnected power supply. It is admitted that the petitioner preferred application before the GRF and during the pendency of the proceeding, the supply of power was continuing. As against the final order of GRF, the petitioner preferred application before the Ombudsman –II and that proceeding ended, with the order dated 22.11.2013 and during the pendency of proceeding before the Ombudsman, the Respondent was precluded from disconnecting the power supply. The terms of contract entered into by the parties, give an authority to the respondent to recover the energy charges with respect to the power consumed by the Petitioner. Only for the period from 01.08.2012 to 31.07.2015, there was no agreement between them, but supply of energy was continued. The Petitioner has renewed the agreement in 2015 as per the consumption , which is at par with the load survey information maintained by the GRIDCO. The findings by the GRF, Ombudsman and the Load survey information, all through leave

no room of doubt that the Petitioner has all along consumed energy in the category of Large Industries. This category relates to supply of power to industries with a contract demand of 110 KVA and above, but below 25000 KVA, where power is substantially utilised as motive force for industrial production, within the meaning of Regulation 80 (10) and not in the category of Regulation 80 (15), which relates to supply of power to industries with generating stations only for start-up of the unit or to meet their essential auxiliary and survival requirements in the event of the failure of their generation capacity.

21. At this point, it is worthwhile to note that the category LI refers to consumption of 110 KVA upto 25000 KVA for motive force for production of industry. Though on behalf of JSL – petitioner, it is contended that there was no contract for supply of power for LI category, from the materials submitted before us, it is otherwise clarified that the petitioner was billed with CD 55555.55 KVA (50000 KVA at 0.9 pf) with demand charges being levied on 44464 KVA. The aforesaid scenario also buttresses the stand of the Respondent - NESCO against the claim of the petitioner – JSL to be billed under category "Industries owning generating stations and captive power plants availing emergency supply only".

It has been contended on behalf of the petitioner – JSL that there was no multi feeder summation metering installation or the consumer meter installation in compliance with the metering Regulation and tariff condition during the relevant period and the maximum demand for the period could not be ascertained.

It has been further contended by the JSL that the maximum demand and the power factor as required for consumer billing under LI category cannot be calculated from the data on the two individual interface meters on the two feeders and the Petitioner was exporting leading reactive power to the grid. To add to this, petitioner JSL raised the contention that there was no contract demand agreed upon for billing the petitioner under the LI category. To further its stand, the petitioner JSL contended that the demand of the respondent NESCO for accepting the SMD data furnished by the GRIDCO is against the principles envisaged under the Rules framed by CEA. It is submitted on behalf of the Petitioner - JSL that the CEA Rules mandates that installation of summation meter is indispensable for accurate billing.

22. The above stated proposition advanced on behalf of the petitioner – JSL cannot be accepted as incontrovertible truth when considered along with the factual scenario.

The Respondent – NESCO raised its demand for bringing the Petitioner – JSL into the category of LI on the basis of the SMD data furnished by the GRIDCO. It is a matter of common observation that the data furnished by GRIDCO is also accepted as flaw-less data by the consumers and no previous fault in the data furnished by the GRIDCO has been ever raised before this Commission. In other words, the SMD data received from GRIDCO do appear to be of higher correctness and of greater acceptability than the propositions advanced by the petitioner – JSL. At this point, for sake of clarity, it can be stated here that the so called proposition of JSL that the metering of power supply is to be worked by vertical summation hardly stands the test of acceptance when the SMD data received from GRIDCO is reported to be of higher acceptability worth as reported by the Fact Finding Team. It may be correct that the Fact Finding Team that conducted the field investigation is not an adjudicating body, but it cannot be brushed aside that the Fact Finding Team consisting of Engineering Experts had submitted the report after interaction with the Engineering representatives of the petitioner and the Respondent. Even the report submitted by the Fact Finding Team has not suffered from any castigation by any authority. In view of the discussions stated above, it can be logically stated that the contention of the petitioner - JSL that the SMD data received from GRIDCO and the report of Fact Finding Team cannot be given extra importance does not survive in the factual scenario of the dispute.

23. At this point, the contention advanced on behalf of the petitioner JSL that after execution of agreement by the Respondent - NESCO on 21.08.2015 with the petitioner JSL for prospective billing, the earlier claim for billing petitioner JSL under LI category stand dissipated is unsustainable, when the entire scenario is examined. On no previous occasion, Respondent-NESCO has surrendered its claim for billing the JSL under LI category either explicitly or impliedly. It is seen that the Respondent-NESCO has asserted all along that the JSL has consumed power continuously and not intermittently for emergency purpose, the stand of the petitioner JSL that it took power "Emergency Supply to CGP" purpose is found to be unsustainable when considered along with the unchallengeable SMD data furnished by the GRIDCO. Even the stand of the petitioner JSL that there was no summation metering installation and the claim of the petitioner JSL for reclassification in the absence of summation metering as unsustainable is found to be weak, when the situation speaks that the petitioner JSL was originally inducted as a consumer on "Emergency Supply to CGP" only to keep its CGP units operational. Non installation

of summation metering cannot be read as grave hurdle against the billing the petitioner JSL in the category of LI, though originally petitioner JSL was classified as "Emergency Supply to CGP', when the SMD data otherwise speaks that petitioner JSL consistently drew power of LI category from 01.07.2012 to 31.07.2015.

The reply given by the petitioner JSL in response to the notice issued by the Respondent-NESCO was not even substantially pressed before the Fact Finding Team that conducted on field investigation and as such, with several rounds of litigation, the hazy response cannot be read as substantive evidence for upholding the stand of the petitioner JSL.

24. From the aforesaid discussions, the following points stand crystallised as established beyond doubt.

(i) As per the observations of the Hon'ble APTEL, compliance of Regulation 82 of the Supply Code, 2004, in the matter of issuance of notices to the petitioner JSL has been adequately complied with by issuance of letters dated 21.11.2012 and 20.12.2012.

(ii) The Fact Finding Team consisting of the Technical Experts was deputed by the Commission and the Fact Finding Committee conducted exercise on field investigation with participation of the Engineering Experts representing the petitioner – JSL and the respondent – NESCO and the Fact Finding Team submitted its report.

(iii) At no point of time, the report of the Fact Finding Team has been assailed by the Petitioner - JSL before the Hon'ble APTEL.

(iv) On 21.08.2015, the petitioner-JSL entered into an agreement with the respondent – NESCO agreeing to be categorised under the category "Large Industry" under Regulation 80(10) of the Supply Code, 2004 instead of earlier category "Industries owning generating stations and captive power plants availing emergency supply only" under Regulation 80 (15) of the Supply Code, 2004.

(v) The contention of the petitioner that the order of the Ombudsman-II on the issue has attained finality and cannot be revisited on well settled principles of res-judicata, is fallacious after judgement of Hon'ble APTEL in Appeal No.186 of 2020.

25. Month wise simultaneous maximum demand data in respect of 2 Nos. of Jindal Stainless Steel feeders for the period from April 2012 to 8th December, 2015 furnished by GRIDCO can be logically relied as a supporting material for adjudication of dispute. For sake of clarity, the report of GRIDCO containing SMD particulars was not castigated even before the Hon'ble APTEL though the petitioner – JSL had adequate opportunity to point out any defect in respect of the report of the Fact Finding Team or the data furnished by the GRIDCO. In such a scenario, there appears greater reasonableness to accept the report of the GRIDCO containing the SMD data in tune with the report submitted by the Fact Finding Team. At this point, though it is vehemently asserted on behalf of the petitioner – JSL that it can be categorised as "Industries owning generating stations and captive power plants availing emergency supply only" as per the erstwhile agreement between the parties, the factual scenario leads to a different conclusion when liability of the petitioner – JSL is considered keeping the SMD data furnished by GRIDCO and that report of the Fact Finding Team in view. There is no strong material before us to reject SMD data furnished by GRIDCO for the period from April, 2012 to 8th December, 2015 and the data collected by the Fact Finding Team through exercise of on field investigation. Though agreement between the parties was effected for categorising the petitioner – JSL in the category of "Industries owning generating stations and captive power plants availing emergency supply only", but from the reading of the SMD data furnished by GRIDCO and the report submitted by the Fact Finding Team after on field investigation, there appears greater force in accepting the contentions of NESCO utility. In other words, the contention of the respondent – NESCO that JSL is to be brought into the category of "Large Industry" instead of "Industries owning generating stations and captive power plants availing emergency supply only" is found to be of greater acceptability than the stand of JSL – Petitioner. After all, in a dispute of this nature, the fate of the parties can be decided on principles of pre-ponderance of higher probability. Thus it is concluded that for the period from 01.07.2012 to 31.07.2015 the petitioner – JSL is liable to be billed as a consumer of Large Industry category.

26. In view of the discussions, it is held that even in the absence of Contract Demand, the petitioner JSL can be legally billed under category of Large Industry for the relevant period and that the claim as advanced by the petitioner that JSL for the period from 01.07.2012 till 31.07.2015 was a consumer under category under Regulation 80 (15)

of the Supply Code, 2004 “Emergency Supply to CGP” cannot be accepted. The Petitioner is to be reclassified as a consumer under category Large Industry under Regulation 80 (10) of the Supply Code, 2004 with CD of 50 MW and actual demand basing on SMD data of GRIDCO. The petitioner is directed to make payment of the differential amount for that period, adjusting the amount already paid, within a period of 2 months hence.

27. The issues are answered accordingly.

Sd/-
(G. Mohapatra)
Member

Sd/-
(U. N. Behera)
Chairperson