IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO. 108 OF 2022

Date: 31.10.2022

Present: Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

JAIGAD POWER TRANSCO LIMITED
JSW Centre
Bandra Kurla Complex
Bandra (East)
Mumbai 400 051 ... Appellant

VERSUS

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
Through its Secretary
World Trade Centre, Centre No.1
13th Floor, Cuffe Parade,
Colaba, Mumbai 400005 … Respondent

Counsel for the Appellant (s)	:	Mr. Amit Kapur Mr. Aman Anand Mr. Aman Dixit Mr. Abhimanyu Maheshwari Ms. Divya Kaul
Counsel for the Respondent (s)	:	Mr. S. K. Rungta, Sr. Adv. Ms. Pratiti Rungta Mr. Sumit Pargal for R-1

J U D G M E N T

PER HON'BLE MR. JUSTICE R. K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant is a Joint Venture company set up by *JSW Energy Limited* and *Maharashtra State Electricity Transmission Company Limited* for developing, operating and maintaining a transmission system along with associated equipment and terminal bays at New Koyna and Karad Sub-stations, it having been granted a transmission license for such purposes. It had approached the respondent *Maharashtra Electricity Regulatory Commission* (for short "the State Commission") by a petition (case no.294/2019) for truing-up of *Aggregate Revenue Requirement* ("ARR") for Financial Year ("FY") 2017-2018 and FY 2018-19, provisional truing-up of ARR for FY 2019-20 and ARR for MYT Control Period FY 2020-21 to FY 2024-25.

2. The State Commission passed a detailed order on the said petition on 30.03.2020, the appellant being thereby aggrieved to the extent that the State Commission while carrying out the final true-up of ARR for FY 2018-19 has carried forward and taken into consideration a revenue surplus of Rs.1.95 crore pertaining to FY 2017-18 whereas the actual true-up position shows the revenue gap for FY 2017-18 was Rs.0.77 crore only. It is stated that the error has resulted in lower ARR for FY 2020-21 burdening the appellant with excessive carrying cost of about Rs.0.38 crore. It may be mentioned here that the appellant had sought review by filing a petition (case no.83/2020) which was rejected by order dated 06.06.2020.

3. While rejecting the review petition by order dated 06.06.2020, the State Commission has, *inter alia*, observed as under:

"5.18. From the above rulings of the impugned Order, it is worthwhile to note that the ARR of Rs. 90.19 Crore approved after final True Up for FY 2017-18 (as shown in the Table No. 47 of the Impugned Order) is without deducting surplus of Rs. 1.95 Crore approved by the Commission for FY 2017-18 at the time of provisional true-up under 12th September 2018 Order. This provisional surplus of the FY 2017-18 is only considered by the Commission as part of the Truing up of FY 2018-19 as in the earlier Order dated 12 September, 2018, the effect of surplus owing to provisional true-up of FY 2017-18 was passed on in FY 2018-19 only.

5.19. Thus, while assessing the final Revenue Gap/Surplus for FY 2018-19 as part of true-up, the Commission in the Impugned Order has trued up the expenses of JPTL and accordingly revised the expenses from Rs 82.32 Crore to Rs. 82.18 Crore. While doing so all the past period impact as considered in the 12th September 2018 Order was retained as it is which is shown in Table 48 of the impugned Order. After considering this impact, the final trued up ARR was determined to be Rs. 69.02 Crores. Hence, it may be noted that, other than reassessing the stand-alone ARR of FY 2018-19 as part of truing up, the gap/(surplus) pertaining to the past years viz. FY 2010-11 to FY 2014-15, FY 2015-17 to FY 2016-17 and that of FY 2017-18 allowed to be passed on in FY 2018-19 in the previous Order has been considered at same level while final true-up of FY 2018-19. Thus, all gap/(surplus) approved for past years remain the same and need not be further trued up. By the logic of JPTL that impact of provisional true-up of FY 2017-18 should not be considered while arriving at Final ARR of FY 2018-19, the impact of other past years also should not have been considered in FY 2018-19. However, that is not the case and thus the logic of the JPTL does not hold merit. The impact of final true-up of FY 2017-18 is anyway separately accounted for in the True-up section of FY 2017-18, of which final impact in allowed in FY 2020-21.

…

5.22. It is worth noting the fact that the Revenue Gap of Rs. 0.77 Crore for FY 2017-18 arrived in the Impugned Order is not included in the revenue surplus of Rs.1.95 Crore approved by the Commission. Hence, the contention of the JPTL that the Commission vide its Impugned Order finally trued up the ARR for FY 2017-18 has approved the revenue gap of Rs. 0.77 Crore and Revenue Surplus of Rs. 1.95 crore for FY 2017-18 as held in the Order dated 12 September, 2018 is non-est and the Commission inadvertently deducted the amount of Rs. 1.95 Crore while truing up the ARR of FY 2018-19 is not true. The treatment of gap/(surplus) of provisional true up is considered separately and the treatment of gap/(surplus) of final true-up is considered separately.

5.23. From the above analysis it is clear that a revenue gap of Rs. 0.77 for the FY 2017-18 is a standalone gap and does not include the surplus calculated for FY 2017-18. Further the surplus of Rs. 7.04 Crore for FY 2018-19 is including Rs. 1.95 Crore provisionally approved in Case No. 167 of 2017. Hence, the contention of JPTL that there is an error in accounting of surplus of Rs. 1.95 Crore and consequent carrying / holding cost is not true."

4. It is not in dispute that while carrying out the provisional true-up assessment for FY 2017-18 by MTR Order dated 12.09.2018, on the basis of forecast, the State Commission had accepted the projection that the appellant would recover a surplus of Rs.1.95 crore from transmission tariff in FY 2017-18. Accordingly, the said amount was provisionally adjusted from the ARR from the FY 2018-19 in the said MTR order it, of course, being subject to a final true-up. This position is reflected in the following tables forming part of MTR order dated 12.09.2018:-

"Table 97: Revenue Gap/ (Surplus) for FY 2017-18 approved by Commission (Rs. Crore)

Sr. No.	Particulars	MTR Petition	Approved in this Order
1	*Total ARR*	*89.06*	*87.93*
2	*ARR recovered through Transmission Tariff*	*89.88*	*89.88*
3	*Revenue Gap/ (Surplus)*	*(0.81)*	*(1.95)*
4	*Carrying/(Holding) Cost*	*(0.04)*	*0.00*
5	***Revenue Gap/ (Surplus) to be pass on in FY 2018-19***	***(0.85)***	***(1.95)***

"

"Table 119: ARR for FY 2018-19 and FY 2019-20 approved by Commission (Rs. Crore)

Particulars	FY 2018-19			FY 2019-20		
	MYT Order	MTR Petition	Approved in this Order	MYT Order	MTR Petition	Approved in this Order
Operation & Maintenance Expenses	4.79	4.79	*4.79*	*5.02*	*5.02*	*5.02*
Depreciation	*29.42*	29.16	*29.12*	*29.41*	*29.20*	*29.16*
Interest on Long-term Loan	*22.97*	19.50	*19.41*	*19.79*	*16.87*	*16.80*
Interest on Working Capital	*1.82*	1.55	*1.37*	*1.78*	*1.53*	*1.51*
Contribution to Contingency Reserves	*1.39*	1.38	*1.38*	*1.39*	*1.39*	*1.38*
Income Tax Expense	*5.61*	6.00	*5.59*	*5.61*	*6.00*	*5.59*
Total Revenue Expenditure	***66.00***	**62.37**	***61.65***	***63.00***	***59.99***	***59.45***
Return on Equity Capital	*21.72*	21.54	*21.46*	*21.72*	*21.59*	*21.52*
Aggregate Revenue Requirement	***87.72***	**83.91**	***83.11***	***84.72***	***81.57***	***80.98***
Less: Non Tariff Income	*0.79*	0.79	*0.79*	*0.90*	*0.91*	*0.91*
Add: Net Entitlement after sharing of gains/(losses) – refinancing of loan		0.95	*0.00*		*0.82*	*0.00*
Net Aggregate Revenue Requirement	***86.93***	**84.07**	***82.31***	***83.82***	***81.49***	***80.07***
Add: Gap/ (Surplus) for FY 2010-11 to FY 2014-15			*(3.45)*			
Add: Gap/ (Surplus) for FY 2015-16 & FY 2016-17		15.96	*(5.28)*			
Add: Gap/ (Surplus) for FY 2017-18		(0.81)	*(1.95)*			
Carrying Cost/ (Holding Cost) of above Revenue Gap/ (Surplus)		5.40	*(3.22)*			
Total Annual Revenue Requirement including past Revenue Gap/ (Surplus)	***86.93***	**104.61**	***68.42***	***83.82***	***81.49***	***80.07***

"

5. The State Commission, in fact, has adjusted the revenue gap of Rs.0.77 crore in the ARR of FY 2020-21, this being reflected by the following tables and observations made part of the impugned order:

"***Table 52: Revenue Gap for FY 2017-18 and FY 2018-19, as approved by Commission (Rs. Crore)***

Particulars	***FY 2017-18***	***FY 2018-19***
Total ARR Approved in this Order	*90.19*	*69.02*
Revenue Recovered	*89.42*	*76.06*
Gap/ (Surplus)	*0.77*	*(7.04)*

"2.19.10 The Commission approves the Revenue Gap of Rs. 0.77 Crore in FY 2017-18 and Revenue Surplus of Rs. (7.04) Crore in FY 2018-19 along with carrying/holding cost for recovery in FY 2020-21 along with the ARR approved for the year."

...

"4.10.2 The Commission in the respective section of the Order computed the Revenue Gap/ Surplus determined under truing up of FY 2017-18 and FY 2018-19 and Provisional Truing up of FY 2019-20. The Commission allows the recovery of the same while determining the ARR in FY 2020-21. The details of the Past Gaps/(Surplus) claimed in FY 2020-21 is outlined as below:

Table 96: Past Gaps / Surplus claimed in FY 2020-21, as approved by Commission (Rs. Crore)

Sr. no.	***Details of Gaps/Surplus***	***Amount***
a.	*Add: Gap / (Surplus) for True-up FY 2017-18*	*0.77*
b.	*Add: Gap / (Surplus) for True-up FY 2018-19*	*(7.04)*
c.	*Add: Gap / (Surplus) for True-up FY 2019-20*	*0.49*
	Total	***(5.79)***

...

"4.12.2 Based on the analysis in the preceding paragraphs, the Commission has approved the ARR for JPTL for MYT Control Period FY 2020-21 to 2024-25 as shown below:

Table 100: Aggregate Revenue Requirement for MYT Control Period, as Approved by the Commission (Rs. Crore)

Particular	***JPTL Petition***					***Approved in this order***				
	FY 2020-21	***FY 2021-22***	***FY 2022-23***	***FY 2023-24***	***FY 2024-25***	***FY 2020-21***	***FY 2021-22***	***FY 2022-23***	***FY 2023-24***	***FY 2024-25***
Operation &Maintenance Expenses	*5.28*	*5.44*	*5.62*	***5.07***	*5.27*	*4.53*	*4.69*	*4.87*	*5.07*	*5.27*
Depreciation	*29.15*	*29.19*	*29.18*	*29.18*	*29.19*	*29.14*	*29.19*	*29.18*	*29.19*	*29.18*
Interest on Long-term Loan	*14.32*	*11.69*	*9.86*	*6.23*	*3.51*	*14.27*	*11.63*	*8.90*	*6.17*	*3.45*
Interest on Working Capital	*1.72*	*1.44*	*1.41*	*1.37*	*1.34*	*1.35*	*1.41*	*1.38*	*1.35*	*1.32*
Income Tax						*-*	*-*	*-*	*-*	*-*
Contribution to Contingency Reserves	*1.38*	*1.39*	*1.39*	*1.39*	*1.39*	*1.38*	*1.39*	*1.39*	*1.39*	*1.39*
Total Revenue Expenditure	***51.86***	***49.13***	***46.56***	***43.24***	***40.69***	***50.67***	***48.30***	***45.72***	***43.17***	***40.60***
Return on Equity Capital	*24.83*	*24.91*	*24.91*	*24.91*	*24.91*	*23.56*	*23.63*	*23.63*	*23.63*	*23.63*
Gross Aggregate Revenue Requirement	***76.69***	***74.04***	***71.46***	***68.14***	***65.60***	***74.23***	***71.92***	***69.35***	***66.80***	***64.23***
Less: Non-Tariff Income	*1.01*	*1.12*	*1.23*	*1.33*	*1.44*	*1.01*	*1.12*	*1.23*	*1.33*	*1.44*
Net Aggregate Revenue Requirement	***75.68***	***72.92***	***70.24***	***66.81***	***64.15***	***73.21***	***70.80***	***68.12***	***65.46***	***62.79***
Add: Gap/ (Surplus) for FY 2017-18	*16.73*					*0.77*				
Add: Gap/ (Surplus) for FY 2018-19	*(3.32)*					*(7.04)*				
Add: Gap/ (Surplus) for FY 2019-20	*0.50*					*0.49*				
Carrying cost/ Holding Cost for FY 2017-18 to FY 2019-20	*7.28*					*(1.41)*				
Total Annual Revenue Requirement including past gaps	***96.87***	***72.92***	***70.24***	***66.81***	***64.15***	***66.02***	***70.80***	***68.12***	***65.46***	***62.79***

"

6. We find that the Commission has directed recovery of actual revenue gap of 0.77 crore in FY 2020-21 and, in this view, the revenue gap / surplus for FY 2017-18 should have been considered as *"Nil"* for purposes of truing-up of ARR for FY 2018-19. However, while finally truing-up the ARR for FY 2018-19 the provisional revenue surplus of Rs.1.95 crore for FY 2017-18 has been carried forward, this being reflected by the following tables (first being summary of approval for recovery of past revenue gap in FY 2018-19 accorded vide order dated 12.09.2018 and the second to reflect the net ARR approved for FY 2017-18 and 2018-19 in the impugned order):

"***Table 44: Approved Recovery of Past Gap/(Surplus) in FY 2018-19 (as approved by Commission)***

Sr. No.	***Particulars***	***Rs. Crore***
1.	*Gap/Surplus for FY 2010-11 to FY 2014-15*	*(3.45)*
2.	*Gap/Surplus for FY 2015-16 to FY 2016-17*	*(5.28)*
3.	*Gap/Surplus for FY 2017-18*	*(1.95)*
4.	*Carrying Cost/ (Holding Cost) of above Revenue Gap/ (Surplus)*	*(3.22)*
5.	*Recovery of additional income tax of FY 2015-16*	*0.74*
6.	***Total Past Gap/(surplus) allowed to be recovered in FY 2018-19***	***(13.16)***

Table 48: Summary of ARR Truing-up of ARR for FY 2018-19, as approved by Commission (Rs. Crores)

Sr. No.	Particulars	MTR Order	Actual	Deviation	Controllable	Net Entitlement after sharing of gains/ (losses)
1	Operation & Maintenance Expenses	4.79	3.91	(0.88)	0.88	4.20
2	Depreciation Expenses	29.12	29.11	(0.01)		29.11
3	Interest on Long-term Loan Capital	19.41	19.68	0.28		19.68
4	Interest on Working Capital and on security deposits	1.37	0.00	(1.37)	1.52	0.51
5	Income Tax	5.59	6.09	0.50		6.09
6	Contribution to Contingency reserves	1.38	1.38	(0.00)		1.38
7	**Total Revenue Expenditure**	**61.65**	**60.17**	**(1.48)**	**2.40**	**60.97**
8	Return on Equity Capital	21.46	21.46	(0.00)		21.46
9	**Aggregate Revenue Requirement**	**83.11**	**81.62**	**(1.48)**	**2.40**	**82.42**
10	Less: Non Tariff Income	0.79	0.80	0.01		0.80
11	Less: Income from Other Business	0.00		0.00		0.00
12	Add: Incentive	0.00	0.55	0.55		0.55
13	Add: Net Entitlement after sharing of gains/(losses) of refinancing of loan			0.00		0.00
14	**Net Aggregate Revenue Requirement from Transmission Tariff**	**82.32**	**81.38**	**(0.94)**	**2.40**	**82.18**
15	Add: Gap/ (Surplus) for FY 2010-11 to FY 2014-15	-3.45	-3.45	0.00		-3.45
16	Add: Gap/ (Surplus) for FY 2015-16 & FY 2016-17	-5.28	-5.28	0.00		-5.28
17	Add: Gap/ (Surplus) for FY 2017-18	-1.95	-1.95	0.00		-1.95
18	Carrying Cost/ (Holding Cost) of above Revenue Gap/ (Surplus)	-3.22	-3.22	(3.22)		-3.22
19	Add: Recovery of additional income tax of AY 2016-17		0.74			0.74
20	**Total Annual Revenue Requirement including past Revenue Gap/ (Surplus)**	**68.42**	**68.22**	**(0.94)**	**2.40**	**69.02**

”

7. We find that the appellant is rightly aggrieved in that the above has resulted in an erroneous calculation of trued-up ARR in the sum of Rs.69.02 crore as against Rs.70.97 crore, and consequentially the ARR determined for FY 2020-21 is deficient of Rs.1.95 crore, the appellant having been unjustly burdened with additional carrying cost of Rs.0.28 crore, as reflected in the following table forming part of the impugned order:

“***Table 98: Carrying Cost claimed on Past Gap claimed in FY 2020-21, as approved by Commission (Rs. Crore)***

Particular	***FY 2017-18 (Approved in this order)***	***FY 2018-19 (Approved in this order)***	***FY 2019-20 (Approved in this order)***	***FY 2020-21 (Approved in this order)***
Opening Balance	*-*	*0.20*	*(7.40)*	*(7.40)*
Addition During the year (Ex Incentive)	*89.62*	*68.46*	*0.00*	*0.00*
Recovery During the Year	*89.42*	*76.06*	*0.00*	*(7.40)*
Closing Balance	*0.20*	*(7.40)*	*(7.40)*	*0.00*
Average Balance	*0.10*	*(3.60)*	*(7.40)*	*(3.70)*
Wtg. Average rate of Interest	*10.18%*	*9.89%*	*9.55%*	*9.55%*
Carrying / (Holding) Cost	*0.01*	*(0.36)*	*(0.71)*	*(0.35)*
Effective carrying/ (holding) cost for FY 2017-18 to 2019-20	***(1.41)***			

”

8. The learned counsel for the State Commission made valiant attempt to defend the above-mentioned treatment of revenue gap submitting that it was on “stand-alone basis” in order to work out the carrying or holding cost on the revenue gaps, the revenue gap of Rs. 0.77 crore for FY 2017-18 being not inclusive of the surplus of Rs. 1.95 crore calculated for FY 2017-18 adding that the surplus of Rs. 7.04 crore shown for FY 2018-19 includes Rs. 1.95 crore which have been provisionally approved in the MTR order for FY 2017-18.

9. We are not impressed with the above explanation. In the provisional true-up order dated 12.09.2018 for FY 2017-18, the Commission had determined the provisional revenue surplus of Rs. 1.95 crore. This has been revised to a revenue gap of Rs. 0.77 crore for the same period by the impugned order, meant to be recovered in FY 2020-21. Yet, in the true-up for FY 2018-19 by the same very order, the provisional revenue surplus of Rs. 1.95 crore for FY 2017-18 has been deducted bringing out in an inherent contraction. While carrying forward the revenue gap/surplus for past years up to FY 2018-19, the Commission having determined the revenue gap of Rs. 0.77 crore, it could not have deducted the provisional revenue surplus of Rs. 1.95 crore for FY 2017-18. The method adopted results in impermissible under-recovery for the transmission licensee unduly burdening it with excess carrying cost. The impugned decision does not give any reasoning, much less sufficient, for such treatment.

10. For the above reasons, the impugned order to the extent challenged by the appeal at hand cannot be sustained. It is accordingly set aside. The matter is remitted for fresh decision on the issue by the Commission in light of the observation recorded above.

11. In this context, we may also remind the State Commission of the principles to be followed at the stage of true-up exercise, as expounded by Hon'ble Supreme Court in its ruling in the case of *BSES Rajdhani Power Ltd.* vs. *Delhi Electricity Regulatory Commission [2022 SCC OnLine SC 1450]*, as under:-

> *"51.DERC determines ARR of the licensee i.e. costs of undertaking the licensed business which are permitted in accordance with the requirement specified by DERC which is to be recovered from the tariff in the year end. ARR determined by DERC is based on projections. Since the tariff and the ARR are regulated, the Discoms cannot recover anything more than from its consumers than what is allowed by the DERC.*
>
> *52. As noticed above, a tariff order is quasi-judicial in nature which becomes final and binding on the parties unless it is amended or revoked under Section 64(6) or set aside by the Appellate Authority. Apart from this, we are also of the view that at the stage of 'truing up', the DERC cannot change the rules/methodology used in the initial tariff determination by changing the basic principles, premises and issues involved in the initial projection of ARR.*
>
> *53. 'Truing up' has been held by APTEL in* SLDC *v. GERC to mean the adjustment of actual amounts incurred by the Licensee against the estimated/projected amounts determined under the ARR. Concept of*

'truing up' has been dealt with in much detail by the APTEL in its judgment in NDPL v. DERC wherein it was held as under:-

> *"60. Before parting with the judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the Tariff Petition of the utility the Commission has to reasonably anticipate the Revenue required by a particular utility and such assessment should be based on practical considerations. ... The truing up exercise is meant (sic) to fill the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of the year. When the utility gives its own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure. This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence."*

54. This view has been consistently followed by the APTEL in its subsequent judgments and we are in complete agreement with the above view of the APTEL. In our opinion, 'truing up' stage is not an opportunity for the DERC to rethink de novo on the basic principles, premises and issues involved in the initial projections of the revenue requirement of the licensee. 'Truing up' exercise cannot be done to retrospectively change the methodology/principles of tariff determination and re-opening the original tariff determination order thereby setting the tariff determination process to a naught at 'true-up' stage."

12. Given the nature of the issue having a bearing on the subject matter of the order, we would expect the State Commission to accord due priority and expedition to the follow-up action under this remit.

13. The appeal is disposed of in above terms.

Pronounced in open court on this 31st day of October, 2022

(Sandesh Kumar Sharma) **Technical Member**	**(Justice R.K. Gauba)** **Officiating Chairperson**

tpd/tp