THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT RANCHI

Remand Order after Hon'ble APTEL's Judgement in Appeal No. 227 of 2025

Miscellaneous Petition no 02 of 2026 along with Case (Tariff) No. 13 of 2024

Damodar Valley Corporation (DVC)... …………… ……..Petitioner

Vrs.

Association of DVC HT Consumers of Jharkhand ………….Respondent

CORAM: HON'BLE MR. JUSTICE NAVNEET KUMAR, CHAIRPERSON
HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)

For the Petitioner: Mr. Sanjay Sen, Sr. Advocate, Mr. Nihal Bhardwaj and Ms. Surbhi Kapoor

For the Respondent: Mr. Saket Upadhyay, Advocate

ORDER

Date – 31st July, 2026

1. The instant miscellaneous petition has been filed by the petitioner DVC pursuant to the remand order dated 24.04.2026, passed by the Hon'ble APTEL in Appeal No.227 of 225 with respect to order dated 27.05.2025 b y this Commission in Case (Tariff) No. 13 of 2024 for True Up of FY 2023-24.

2. As a consequence, the present Order is being passed in due compliance with, and for the purpose of giving effect to, the Judgment and Order dated 24.04.2026 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 227 of 2025 read with I.A. No. 1092 of 2025.

3. The Petitioner/Appellant (DVC) had filed Appeal in regards to the Commission's order dated 27.05.2025 in Case (Tariff) No. 13 of 2024, for the True-up for FY 2023-24, Annual Performance Review ("APR") for FY 2024-25 and Aggregate Revenue Requirement ("ARR") for FY 2025-26 for its distribution business in the State of Jharkhand.

4. The Appellant has prayed for the following relief before the Hon'ble APTEL.

"(a) Admit the present Appeal against the Order dated 27.05.2025 ("Impugned Order") passed by the Ld. JSERC in Case (Tariff) No. 13 of 2024;

and

(b) Set aside the findings of the Impugned Order in respect of determination of NTI in terms of para 9 of this Appeal and direct Ld. JSERC to consider only the DPS as NTI for the determination of distribution tariff in the State of Jharkhand; and

(c) Declare that the repeated and continuing defiance of the binding orders of this Hon'ble Tribunal by the Ld. JSERC undermines regulatory discipline and warrants issuance of appropriate directions to ensure compliance in future tariff proceedings;

and

(d) Set aside the findings of the Ld. JSERC in the Impugned Order to the extent it

fails to recognize, quantify, or amortize the legitimate revenue gap accrued to DVC for FY 2023-24 and preceding years; and

(e) Direct Ld. JSERC to duly recognize and amortize the accumulated cumulative revenue gap of DVC, which has remained unaddressed over successive tariff periods, despite admitted shortfalls and under-recoveries;

and

(f) Direct Ld. JSERC to provide for suitable tariff increase across consumer categories to ensure time-bound liquidation of the said revenue gap in accordance with Section 61 of the Electricity Act, Clause 8.2.2 of the National Tariff Policy 2016, and Rule 23 of the Electricity (Amendment) Rules, 2024; and

(g) Set aside the findings of the Impugned Order in respect of the erroneously disallowed Interest on Working Capital for FY 2023-24, FY 2024-25 & for FY 2025-26;

and

(h) Set aside the findings of the Impugned Order in respect of the arbitrary disallowance the Rebate on sale of power for FY 2023-24, FY 2024-25 & for FY 2025-26;

and

(i) Set aside the findings of the Impugned Order in respect of the erroneous consideration of the revenue billed amount for FY 2023-24, 2024-25 & for FY 2025-26

and

(j) Set aside the findings of the Impugned Order with respect to erroneous computation the AFC of own T&D system for FY 2023-24 to FY 2025-26;

(k) Pass any such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

5. In IA No. 1092 of 2025 in this Appeal, the Appellant has assailed the Impugned Order dated 27.05.2025 passed by the JSERC and sought ex parte ad interim stay in respect of the determination of NTI.

6. As recorded by the Hon'ble APTEL in the daily order dated 12th February 2026, Learned Counsels for Appellant as well as Respondents, stated that, since the submissions they have made at the interlocutory stage are the same as in the main appeal pertaining to the issue of non-tariff income, this Tribunal may, if it considers it so appropriate, dispose of the main appeal itself on the issue of NTI.

Submissions made by the Appellant DVC

7. DVC submitted that JSERC has wrongly considered income derived from the generation and transmission (G&T) businesses of DVC while determining NTI for the distribution segment. Such inclusion is alleged to constitute judicial overreach as the tariff and associated income recognition for G&T functions fall exclusively within the jurisdiction of the CERC. In this regard, reliance is placed on the Order dated 05.02.2024 passed by this Tribunal in Appeal No. 845 of 2023.

8. The Appellant further submits that JSERC has misinterpreted the provisions of the JSERC Tariff Regulations, 2020, particularly Regulation 3.1(20) and Regulation 10.53, which expressly limit the scope of NTI to income "relating to the distribution business."

9. It is also contended that the State Commission has disregarded the binding framework under the CERC Tariff Regulations, 2019 (Regulation 62) and the Tariff Regulations, 2024 (Regulation 84) which specifically recognize certain categories of non-tariff income such as rental income from land and buildings, sale of scrap and advertisement income as attributable to the generation and transmission businesses.

10. The Appellant further submits that despite placing detailed submissions before the State Commission explaining why various components classified under “Other Income” cannot be treated as NTI for the distribution business, the Impugned Order fails to deal with or adjudicate upon these contentions.

11. It is contended that the JSERC has failed to provide any approximation for the determination of the NTI and barring few items, considered the entire “Other Income” as reflected under the “Power” head of Annual audited accounts as the NTI for distribution business of Jharkhand.

INCORRECT FINDINGS

12. The Appellant has submitted that from paragraphs 5.77 to 5.79 of the Impugned Order, the State Commission has failed to deal with or adjudicate upon the detailed justifications furnished by DVC explaining why various components reflected under the head “Other Income” in the Annual Audited Accounts for FY 2023-24 cannot be treated as NTI for the distribution business. In paragraph 5.80, the Commission has incorrectly relied upon the Order dated 05.02.2024 passed by this Tribunal in Appeal No. 845 of 2023. The Appellant submits that the said reliance is misplaced as this Tribunal in the said judgment has held that:

(i) JSERC lacks jurisdiction to include income arising from the generation and transmission (G&T) and other businesses of DVC as NTI for its distribution business, and;

(ii) Even assuming any error on the part of the Central Commission in not considering such income under the G&T segment, the same would not vest jurisdiction in JSERC to include such income within the distribution business of DVC.

13. With respect to paragraphs 5.82 to 5.85 of the Impugned Order, the Appellant submits that the finding of the Commission that DVC failed to furnish segregation of “Other Income” is incorrect since in the present proceedings, the Commission did not raise any specific query seeking segregation of “Other Income” in the manner alleged. The queries issued by JSERC dated 31.12.2024 particularly Query 1(r) merely sought details of NTI for Jharkhand, West Bengal and bilateral exchange consumers. Similarly, the subsequent query dated 04.02.2025 was incomplete insofar as NTI is concerned. No queries were raised regarding segregation of accounts in terms of balance sheet or profit and loss account, applicability of the JSERC Power Accounting Regulations, 2016 or any requirement of segregating “Other Income” under the “Power” head.

14. By its response dated 22.01.2025, DVC provided segregation of “Other Income” along with detailed reasoning as to why such items ought not to be treated as NTI. An auditor’s certificate providing break-up of Delayed Payment Surcharge (DPS) and other miscellaneous income was also furnished. This was followed by a further response dated 12.02.2025. The Appellant also relies on the judgment dated 29.10.2018 passed by this Tribunal in Appeal No. 206 of 2015 wherein an identical contention raised by DVPCA seeking directions for maintenance of segregated accounts by DVC was expressly rejected.

15. In terms of Sections 33, 45 and 47 of the Damodar Valley Corporation Act, 1948 (“DVC Act”), the accounts of DVC are required to be maintained and audited as prescribed by the Comptroller and Auditor General of India with reference to its three main functions, namely power, irrigation and flood control. DVC presently follows the DVC Rules, 1948 (2nd Amendment) which do not provide for segregation of the power business into generation, transmission, and distribution segments.

16. Paragraph 5.86 of the Impugned Order clearly records that no tariff determination for the distribution segment of DVC has been undertaken till date and that only Delayed Payment Surcharge has been treated as Non-Tariff Income.

17. With respect to paragraph 5.87 of the Impugned Order, the Appellant submits that the Commission has incorrectly interpreted the judgment dated

23.11.2007 passed by this Tribunal in Appeal No. 271 of 2007 and batch ("2007 Judgment"). The Appellant emphasizes that the 2007 Judgment holds that the provisions of the DVC Act prevail over regulations and that Part IV of the DVC Act and provisions dealing with finance, accounts and audit, continues to apply in full force. It is submitted that the Tribunal had held that regulations framed by the Commission cannot curtail or override the statutory scheme under the DVC Act and must be in conformity not only with the parent statute but also with another Act which is not repealed. It was further held that provisions of the DVC Act which are not inconsistent with the Electricity Act, 2003 continue to operate and that regulations must be read harmoniously with Part IV of the DVC Act. The Tribunal had also clarified that the regulatory powers under Section 61 of the Electricity Act are subject to the fourth proviso to Section 14 and the Commission cannot disregard the provisions of the DVC Act while framing regulations.

18. The Appellant further contends that the 2007 Judgment rejected any artificial bifurcation of capital base between transmission and distribution in the ratio of 87:13 and recognized the unified nature of DVC's transmission system. DVC further infers that 2007 judgement held that the Central Commission has jurisdiction to determine the transmission and distribution tariff of DVC and that the network from generating stations up to HT consumers constitutes "dedicated transmission lines". It is submitted that the aforesaid legal position has been consistently implemented by the Central Commission. In particular, Regulation 53 of the CERC Tariff Regulations, 2014 and Regulation 72 of the CERC Tariff Regulations, 2019 contain special provisions applicable exclusively to DVC, recognizing the primacy of the DVC Act.

19. The Appellant further relies upon the judgment of the Hon'ble Supreme Court in Bhaskar Shrachi Alloys Ltd. vs. DVC, (2018) 8 SCC 281, which affirms the 2007 Judgment. The Hon'ble Supreme Court has held that: (i) non-conflicting provisions of the DVC Act continue to apply; (ii) Part IV of the DVC Act, being not inconsistent with the Electricity Act, 2003 must be taken into account in tariff determination; and (iii) provisions requiring maintenance of separate accounts for "other businesses" are not applicable to DVC.

20. With respect to paragraph 5.88 of the Impugned Order, the Appellant submits that the Commission itself has recorded a finding that the AFC of the transmission and distribution network including return on equity, operation and maintenance expenses, depreciation, interest on loan and capital cost is determined by the Central Commission and forms part of the input cost for retail supply tariff.

21. With respect to paragraph 5.89 of the Impugned Order, the Appellant submits that the Commission has incorrectly relied upon the JSERC Tariff Regulations, 2020. It is contended that a proper reading of Regulations 3.1(20), 3.1(22), 10.53 and 10.55 makes it clear that only such income which has a direct and proximate nexus with the distribution business can be classified as NTI.

22. Paragraphs 5.91 to 5.94 of the Impugned Order are factually erroneous and ignore material evidence already placed on record. It is submitted that DVC had categorically demonstrated that each component of "Other Income" reflected in the audited accounts for FY 2023-24, except Delayed Payment Surcharge (DPS) has no nexus with the distribution business. In the absence of any specific finding by the Commission establishing that any particular component of such "Other Income" is attributable to the distribution activity, the mere inclusion of such items in the audited accounts cannot, ipso facto, justify their classification as NTI for the distribution segment.

23. The Appellant further submits that the Commission, while purporting to adopt a "reasonable approach" has in fact applied an arbitrary methodology. It is contended that the Commission has selectively treated items as NTI merely on the basis of their perceived proximity to the elements contained in Regulation 10.54 of the Tariff Regulations, 2020 without providing any cogent

reasons. Apart from excluding a limited number of items, the Impugned Order fails to explain how or why the remaining components of "Other Income" can be regarded as incidental to or derived from the distribution business. The Commission has neither demonstrated any nexus between such income heads and distribution assets nor recorded reasons to support the assumption that such income arises from retail supply activity. In particular, no reasoning whatsoever has been provided for treating the entire "Other Income" reflected at Serial No. III of Table 63 of the Impugned Order as NTI for the distribution business.

24. The aforesaid approach is in violation of the Order dated 15.10.2024 passed by this Tribunal in Appeal No. 332 of 2024 which has been affirmed by the Hon'ble Supreme Court by order dated 27.01.2025. It is submitted that this Tribunal has, inter alia: (i) held that consideration of the entire NTI of DVC is contrary to the directions issued in the judgment dated 05.02.2024; (ii) laid down the relevant test that only such income which is "incidental to the distribution business" and "derived using distribution assets" can be treated as NTI; and (iii) directed the State Commission to compute category-wise tariff by considering only DPS as NTI for the distribution business thereby reaffirming that DPS alone qualifies as NTI for DVC's distribution segment.

25. The reliance placed by JSERC and the DVPCA on the judgment dated 15.09.2025 passed in Appeal No. 275 of 2015 and batch to justify the approximation methodology is misplaced. It is contended that paragraphs 99 to 101 of the said judgment clearly indicate that approximation was permitted only as an interim arrangement, pending proper identification of distribution assets and determination of NTI.

26. In any case, the fundamental premise of such approximation namely, bifurcation of capital base between transmission and distribution stands expressly rejected by this Tribunal in the judgment dated 23.11.2007 in Appeal No. 271 of 2007 and batch.

Hon'ble APTEL's Judgment

27. Hon'ble APTEL in its order dated 24.04.2026, stated that the captioned Appeal No. 227 of 2025 is allowed only to the limited extent of the issue relating to determination of Non-Tariff Income (NTI). Accordingly, we pass the following order:

(i) The findings of the JSERC in the Impugned Order dated 27.05.2025 in Case (Tariff) No. 13 of 2024, insofar as they relate to the determination and computation of NTI for items j) to y) of table 63 of the Impugned Order are hereby set aside.

(ii) The JSERC is directed to re-compute the tariff by considering Delayed Payment Surcharge (DPS) alone as NTI.

(iii) The JSERC shall carry out the process of identifying DVC's assets forming distribution system within the state of Jharkhand and determination of its tariff with effect from 01.04.2027 in accordance with directions contained in this judgement.

(iv) DVC shall carry out segregation of its accounts into distribution, transmission and generation within the activity of "electrical energy" w.e.f. 01.04.2027 in consultation with CAG.

(v) Insofar as the other issues raised in the present Appeal are concerned, liberty is granted to the Appellant to institute a fresh appeal, if so desired.

DVC's Miscellaneous Petition no 02 of 2026 before the Commission regarding implementation of the Hon'ble APTEL Order dated 24.04.2026 in Appeal No. 227 of 2025

28. Pursuant to the Order dated 24.04.2026 passed by the Hon'ble APTEL in Appeal No. 227 of 2025, whereby the Hon'ble Tribunal directed this

Commission to re-compute the tariff by considering only the Delayed Payment Surcharge (DPS) as Non-Tariff Income (NTI), DVC filed Miscellaneous Petition No. 02 of 2026, before this Commission seeking implementation of the said Order dated 24.04.2026 passed in Damodar Valley Corporation v. Jharkhand State Electricity Regulatory Commission & Ors.

29. Through the said Petition, DVC sought revision and modification of the Order passed in Case (Tariff) No. 13 of 2024 relating to the True-up for FY 2023-24, the Annual Performance Review (APR) for FY 2024-25, and the Aggregate Revenue Requirement (ARR) for FY 2025-26 in respect of its distribution business in the State of Jharkhand, limited to the determination of Non-Tariff Income (NTI) by considering Delayed Payment Surcharge (DPS) alone as NTI.

30. The case was heard on 07.07.2026 by the Commission. Both the parties are given full liberty to present their argument. The order was reserved on 07.07.2026 with the direction to the parties to submit notes, if any, within three days. However, no such objections/notes have been submitted by the respondent.

<u>Commission's Order in view of the above Judgment of Hon'ble APTEL</u>

31. As per the order dated 27.05.2025, the Commission approves the total Non-Tariff Income as 106.08 Rs. Cr. for the FY 23-24 and Delayed Payment Surcharge for the Jharkhand is 0.56 Crore.

32. The Commission has examined the issue of determination of Non-Tariff Income (NTI) for DVC's distribution business in light of the provisions of the JSERC Tariff Regulations, 2020, the statutory requirement of segregation of accounts under Section 51 of the Electricity Act, 2003, and the judgments/orders of the Hon'ble APTEL dated 05.02.2024 and 15.10.2024.

33. The Petitioner contended that only Delayed Payment Surcharge (DPS) attributable to consumers in Jharkhand should qualify as NTI, on the ground that DVC allegedly has no separate distribution asset base or manpower attributable to its distribution activity and that all capital expenditure and employee-related costs are already covered under tariffs determined by Hon'ble CERC for generation and transmission businesses.

34. The Commission observed that the Hon'ble APTEL, in its judgment dated 05.02.2024 in Appeal No. 845 of 2023, had specifically remanded the matter for ascertainment of the break-up of NTI attributable to DVC's distribution business, and had directed that only such NTI relatable to distribution activity in Jharkhand should be reduced from ARR. The Tribunal had not accepted the proposition that only DPS could constitute NTI; rather, it required proper segregation and determination of income attributable to the distribution business.

35. The Commission further noted that despite repeated opportunities, the Petitioner failed to furnish duly segregated and auditor-certified accounts separating generation, transmission and distribution related "Other Income". The Petitioner merely reiterated that since no separate distribution asset base or manpower expenditure was claimed in the Retail Supply Tariff, only DPS should be considered as NTI.

36. The Commission holds that such contention cannot be accepted. A deemed distribution licensee under Section 14 of the Electricity Act, 2003 necessarily operates and maintains a distribution system, and therefore cannot claim absence of any distribution asset base. Reliance was placed on observations of the Hon'ble APTEL in its interim order dated 15.10.2024 and earlier judgment dated 23.11.2007 in Appeal No. 271 of 2006 & batch, wherein the issue of determination of DVC's distribution network capital base had been specifically recognized.

37. The Revenue Gap assessed by the Commission in order dated 27.05.2025 is tabulated as follows:

Particulars	Formula	Amount (Rs. Cr.)
ARR (without NTI)	A1	5439.31
NTI	A2	106.08
ARR	A = A1 – A2	5333.23
Revenue billed/ Revised revenue billed	B	4379.22
FPPPA Billed in FY 2023-24	C	264.04
Revenue Gap for the Year	**D=(A-B-C)**	**689.97**

38. Now, after the Hon'ble APTEL's direction to re-compute the tariff by considering Delayed Payment Surcharge (DPS) alone as NTI, the Commission has undertaken the analysis and considered only DPS of Jharkhand i.e. 0.56 Crore as the Total NTI.

39. The detailed computation is given in the following table.

Particulars	Formula	Amount (Rs. Cr.)
ARR	A	5333.23
Revenue billed/ Revised revenue billed	B	4379.22
FPPPA Billed in FY 2023-24	C	264.04
Revenue Gap for the Year	D=(A-B-C)	689.97
DPS	E	0.56
NTI (as per Tariff Order dated 27.05.2025)	F	106.08
New Revenue Gap for the Year	**G = D – E + F**	**795.49**

40. Accordingly, the revised Revenue Gap for the Year (standalone) is determined as 795.49 Crore.

41. Accordingly, in compliance with the Judgment dated 24.04.2026 passed by the Hon'ble APTEL in Appeal No. 227 of 2025, the Commission hereby revises the admissible Non-Tariff Income for FY 2023-24 by considering only the Delayed Payment Surcharge (DPS) attributable to the Jharkhand distribution business as NTI in Case (Tariff). No 13 of 2024 for the True Up FY 2023-24 passed by this Commission in order dated 27.05.2025. Consequently, the revised revenue gap for FY 2023-24 stands determined at Rs. 795.49 Crore.

42. Further, the direction given by Hon'ble APTEL to DVC, namely, *"(iv) DVC shall carry out segregation of its accounts into distribution, transmission and generation within the activity of "electrical energy" w.e.f. 01.04.2027 in consultation with CAG."*, is to be completed within stipulated period of time in letter and spirit. In this context, the Petitioner is also directed to comply with

43. the direction issued by this Commission in Suo-Moto Case No. 02 of 2026, within stipulated time in letter and spirit.

44. With the aforesaid observations and directions, the present Petition is disposed of.

Sd/-	Sd/-
Member (Law)	Chairperson