

**JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION
RANCHI**

Case No. 04 of 2010

MUKHTIAR SINGH, Chairperson

IN THE MATTER OF

An application for review of Tariff Order for FY 2009-10 of Tata Steel Limited (TSL).

AND

IN THE MATTER OF

M/s Tata Steel Limited (TSL) Petitioner

For the Petitioner : Shri Sharad Kumar, General Manager
Shri D.M. Choudhary, Chief of Electrical Maintenance
Shri K.C. Jha, Financial Controller

**ORDER
(05.03.2010)**

M/s Tata Steel Limited, hereinafter referred to as “the petitioner-TSL” has filed a petition for review of the Tariff Order dated 20th January 2010 for the year 2009-10. The petitioner-TSL has requested to review the aforesaid Tariff Order on three counts viz. (i) Return on Equity (RoE); (ii) Disallowance/reduction of revenue on account of anticipated lower collection efficiency; and (iii) Disallowance/ deduction of proportionate depreciation on Gross Fixed Assets (GFA) created out of consumer contributions.

Heard.

I give my findings on each of the points hereinbelow:

A. Return on Equity

As regards Return on Equity (RoE), it has been argued on behalf of the petitioner that the Commission has allowed Return on Equity @ 14% whereas it should have been calculated @ 16%. In support of the argument, it has been

pointed out that several other States like Delhi, Goa & Union Territories, Uttar Pradesh, Maharashtra are calculating Return on Equity @ 16% and as such the petitioner should also be allowed at the same rate.

It is a fact that the Regulations framed by the Commission of the aforesaid States have provided Return on Equity @ 16%, but those Regulations are not applicable in the State of Jharkhand because this State has its own Regulations viz. JSERC (Terms & Conditions for Distribution Tariff) Regulations, 2004. Clause 20 of the said Regulation provides as under:

“Clause 20 : Return on Equity

20.1 The return shall be computed @ 14% on the equity base calculated, as aforementioned.”

The aforesaid Regulation makes it very clear that in Jharkhand the rate of Return on Equity has been prescribed @ 14% and not @ 16% as claimed by the petitioner. In view of the aforesaid Regulation I do not think that the petitioner is entitled for Return on Equity @ 16%.

B. Disallowance/reduction of revenue on account of anticipated lower collection efficiency:-

Coming to the second point about the disallowance/reduction of revenue on account of anticipated lower collection efficiency, the petitioner has claimed that there are certain situations where, despite best efforts by the petitioner, some dues are not collected or recovered and hence such Bad Debts should be allowed to the petitioner.

Here also I would like to reproduce provisions of Clause 10 of the JSERC (Terms & Conditions of Distribution Tariff) Regulations 2004, which runs as under:

“Clause 10 : Provision for Bad and Doubtful Debts:

10.1 No amount can be allowed to be passed on the consumer on the ground of it being bad and doubtful debt as it will lead to inefficiency in collection.”

In view of the aforesaid explicit provision in the Regulation applicable to the petitioner I do not think that they can be allowed bad and doubtful debts. As such, this plea is also not acceptable.

C. Disallowance/deduction of proportionate depreciation on Gross Fixed Assets (GFA) created out of consumer contributions.

As regards the third point about disallowance/deduction of proportionate depreciation on Gross Fixed Assets created out of consumer contributions, the provisions of Clause 14 of JSERC (Terms & Conditions of Distribution Tariff) Regulations, 2004 are relevant here, which are reproduced below:

Clause 14: Depreciation:

- 14.1 *The capital base for the purpose of depreciation shall be the historical cost of the asset.*
- 14.2 *Depreciation shall be calculated annually as per straight-line method at the rate of depreciation as prescribed in the schedule attached to the Regulation at Appendix-II
Provided that the total depreciation during the life of the project shall not exceed 90% of the approved original cost.*
- 14.3 *On repayment of entire loan, the remaining depreciable value shall be spread over the balance useful life of the asset.*
- 14.4 *Depreciation shall be chargeable from the first year of operation. In case of operation of the asset for part of the year, depreciation shall be charged on pro-rata basis.*

From the perusal of the aforesaid provision of the Regulation, it seems that there is no provision for allowing depreciation on Gross Fixed Assets created out of consumer contribution. I do agree with the petitioner that the Regulations of some of the States as well as the Electricity (Supply) Act, 1948 does provide for allowance of such depreciation. I also agree that there is no specific denial in the Regulation of JSERC as well as. Rather I would say that the aforesaid Regulations are silent on it. But there is no specific provision in the Electricity Act 2003 whereas in Schedule-VI of the Electricity (Supply) Act, 1948, there was a

provision for allowing such depreciation. The extract of paragraphs VI and XII of the Schedule-VI of the Electricity (Supply) Act, 1948 are reproduced below:

“VI. (a) The licensee shall provide each year for depreciation such sum calculated in accordance with such principles as the Central Government may, after consultation with the Authority, by notification in the official Gazette, lay down from time to time.

(b) Where in any particular year depreciation cannot be adjusted against revenues, the same may be carried over to subsequent years.

(c) The provisions of this paragraph shall apply to the charging of depreciation for the year in which the Electricity (Supply) Amendment Act, 1978 (23 of 1978), comes into force.

XII. Where contributions are made by consumers towards the cost of construction of service lines constructed after the date on which this Act comes into force only the net cost of such service lines after deducting such contributions shall be included in the cost of fixed assets for the purposes of arriving at the capital base:

Provided that for the purposes of depreciation under paragraph VI, the total original cost of construction of the service lines shall be taken into account.”

A perusal of the aforesaid paragraph of Schedule-VI of the Electricity (Supply) Act, 1948 does buttresses the point of the petitioner that Electricity (Supply) Act, 1948 did provide such depreciation, but that Act stands repealed by the Electricity Act, 2003. Section 185 of the Electricity Act, 2003 reads as under:

“185: Repeal and saving – (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.”

The provisions of the Electricity (Supply) Act, 1948 were before the Legislature when the Electricity Act 2003 was enacted. But in its wisdom, the Legislature has not adopted the provisions regarding the allowance of depreciation on assets created out of the consumer contribution. It means, to me, the Legislature has left out knowingly this provision after careful consideration and that is why such a concession does not find place in the Electricity Act, 2003. Moreover, to me, it does not stand the test of equity as well that the depreciation should be allowed on assets created out of consumer contribution because the

licensee has not spent anything towards the creation of such assets. If depreciation is allowed on assets created out of consumer contribution it will be a double burden on the consumer, first the consumer spent the money towards the creation of the particular assets and, secondly, on such assets the depreciation is reflected in the tariff as well. Certainly, such an arrangement does not sound well on equity and, as such, on this count also I do not find any merit in the prayer of the petitioner.

In view of the above discussions, the review petition of the petitioner-TSL is disallowed.

(Mukhtiar Singh)
Chairperson