

**6IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 179 OF 2021

Dated: 29th MAY, 2026

**Present: Hon`ble Ms. Seema Gupta, Officiating Chairperson
Hon`ble Mr. Virender Bhat, Judicial Member**

IN THE MATTER OF:

M/s TATA STEEL LTD.,
Through its Authorized Representative,
Jeevan Bharati Building, Tower 1,
10th Floor, 124,
Connaught Circus,
New Delhi - 110001

Appellant

Versus

1. The Secretary,
Jharkhand State Electricity Regulatory Commission.
2nd Floor, Rajendra Jawan-cum-Sainik Bazar,
Main Road, Ranchi 834001

2. The Chairman,
Damodar Valley Corporation,
Registered office at DVC Towers,
VIP Road, Kolkata – 700052.

3. Chief Engineer (Commercial)
Damodar Valley Corporation, DVC Towers,
VIP Road, Kolkata - 700052

4. Chief Accounts Officer,
Damodar Valley Corporation, DVC Towers,
VIP Road, Kolkata - 700052

- Respondent(s)

Counsel on record for the Appellant(s) : Ms. Nandini Gore
Ms. Sonia Nigam
Ms. Swati Bhardwaj
Mr. Akhil Abraham Roy
Mr. Rajat Das Gupta
Mohmmad Shayan Khan
Mr. Akarsh Sharma
Ms. Manvi Rastogi for App. 1

Counsel on record for the Respondent(s) Mr. Rakesh Kaushi Pathak
for Res.1

Mr. Shri Venkatesh
Mr. Tushar Srivastava
Mr. Ashutosh Kumar Srivastava
Mr. Anant Singh Ubeja
Mr. Jatin Ghuliani
Mr. Nihal Bhardwaj
Mr. Siddharth Joshi
Mr. Rishub Kapur
Mr. Abhishek Nangia
Ms. Mehak Verma
Ms. Simran Saluja
Mr. Jayant Bajaj
Mr. Isnain Muzamil
Ms. Neha Das
Mr. Suhael Buttan
for Res. 2 to 4

JUDGEMENT

PER HON'BLE MRS. SEEMA GUPTA, OFFICIATING CHAIRPERSON

1. The captioned appeal No. 179 of 2021 has been filed by Tata Steel Ltd (**Appellant**), challenging the order dated 24.07.2019 in Case No. 06 of 2005-06 (**Impugned Order**) passed by the Jharkhand State Electricity Regulatory Commission, the Respondent No. 1(**hereinafter referred as "JSERC/State Commission"**). The Impugned Order has dealt with two primary issues, Delayed

Payment Surcharge (“DPS”) on Fuel Surcharge (“FCS”) Bills and DPS on Additional Minimum Guarantee (“AMG”) Bills

Description of Parties:-

2. The Appellant- Tata Steel is a company primarily engaged in the manufacture and business of iron and steel products and it is the licensee and procurer of electricity from DVC for the purpose of reselling, through two connections of 33 KV and 132 KV.

3. The Respondent No.1 / JSERC is the State Commission, the statutory regulatory body for the power sector in the State of Jharkhand.

4. Respondent No. 2 – the Damodar Valley Corporation (DVC) is a statutory body constituted under the provisions of the Damodar Valley Act, 1948 dealing with the Damodar Valley Area falling within the geographical boundaries of two states – West Bengal and Jharkhand. DVC is engaged in generation, transmission, distribution, bulk sale and retail sale of electricity to the consumers in the Damodar Valley Area. Respondent No 3 and 4 are officers of DVC.

Discussion and Analysis

5. Heard Mr. Amar Dave, learned senior Counsel on behalf of the Appellant, Mr. Shri Venkatesh, learned counsel on behalf of the Respondent No 2, 3 and 4, perused the Impugned Order, written submissions filed by the parties and other documents. Following two issues have been raised by Appellant in the present Appeal

- Permitting levy of Delayed Payment Surcharge (“DPS”) on Fuel Surcharge (“FCS”) Bills.

- Allowing interest @6% per annum for refund of DPS realized by DVC on Additional Minimum Guarantee (“AMG”) Bills.

6. During the hearing of the Appeal, Learned senior counsel on behalf of the Appellant submitted that issue no. (a) does not survive in view of the judgement passed by Hon’ble High court of Jharkhand in LPA No 305 of 2015 and connected LPAs and only issue no b) survives for adjudication in the present Appeal, same was recorded in this Tribunal Daily Order dated 02.02.2026. Accordingly, deliberations in the present Appeal are limited to issue No. b).

Issue b) Allowing interest @6% per annum on DPS realized by Respondent DVC on Additional Minimum Guarantee (“AMG”).

7. Respondent No 2, DVC has been supplying electricity to the Appellant since 1954 at 33kV and 132 kV and for which purpose, agreements have been executed between them from time to time. In the present issue, DVC has raised two bills for AMG charges totaling to Rs 37.57 Crore for the year 2001-2002 on 03.05.2002. Appellant vide its letter dated 18.05.2002 requested payment of such bills in six equal installments without levy of DPS on installments. DVC vide letter dated 10.06.2002, accepted the request of Appellant for payment in six installments however subsequently DVC vide its letter dated 25.06.2002 did not agree for waiver of DPS for the payment made in the installments. The Appellant, in the meantime, on 25.05.2002 made payment of Rs 14.75 Crore with respect to 33 kV connection and subsequently, on receiving the letter dated 25.06.2002 from DVC, for non-waiver of DPS in case of payment made in installments, Appellant cleared the pending bills within three days. DVC, raised a DPS bill of Rs 77.60 lacs on account of payment of AMG charges in installments. Appellant

has contended that such DPS amount of Rs 77.60 lacs has been adjusted by DVC against the monthly advance payment made by Appellant to DVC.

8. It has been contended on behalf of Respondents-DVC that, both in the present Appeal as well as during the course of oral submissions, the Appellant has nowhere either pleaded or demonstrated that any amount towards DPS was ever paid to Respondent No.2. It is further submitted that DVC in its reply dated 26.11.2021, has specifically raised the contention that no payment towards DPS has been made by the Appellant and the said categorical assertion has not been denied or controverted by the Appellant in its rejoinder dated 28.04.2022. It is a settled position that an averment not specifically denied is deemed to be admitted.

9. The issue canvassed in the present Appeal is confined to the adequacy of the rate of interest allowed by the State Commission on the refund of Delayed Payment Surcharge (DPS) by DVC. The Appellant has only assailed the fixation of interest at 6% per annum as being inadequate and non-compensatory. It is pertinent to note that the controversy does not extend to the question whether any DPS was realized by the Respondent-DVC, but rather to the rate of interest payable on the refund thereof. On behalf of the Respondent-DVC, it has been contended that since no DPS was realized by DVC or paid by the Appellant, therefore the question of interest on a non-existent amount is of no relevance. Though, we are required to adjudicate about the rate of interest to be allowed on the refund of DPS, we note from the Impugned Order that Respondent- DVC has never contended about non-receipt or non-adjustment of DPS amounts from the Appellant, before the State Commission and has infact made categorical submissions about adjusting the surcharge amount of AMG from the advance

paid by the Appellant. Relevant paragraph from the Impugned Order is extracted hereunder: -

“Learned Counsel for the respondent submitted that for same reasons in respect of Interest/Surcharge on installment payments of arrear fuel surcharge, petitioner is also liable to pay Interest/Surcharge in respect of installment payment of A.M.G. charges. It is submitted that despite of repeated letters by DVC to TISCO for payment of Interest/Surcharge, petitioner did not pay the same and under these compelling circumstances, DVC had to adjust outstanding Interest/Surcharge against the advance monthly payments made by the petitioner from the month of July 2004”

10. The Respondent-DVC submissions were confined to the plea that the Chief Engineer/Chairman/Board of Directors of DVC did not possess the authority to waive delayed payment surcharge, and therefore the petition was liable to be dismissed. From the above, it is clear that the Respondent-DVC has admitted that unpaid DPS on the AMG bills were adjusted against the advance monthly payments made by the Appellant.

11. The Respondent-DVC is present contention before this Tribunal that no DPS amount is liable to be refunded as no DPS was claimed by DVC and hence the rate of interest is of no consequence—runs contrary to the position taken before the State Commission. Acceptance of such a plea would in effect require this Tribunal to adjudicate upon the very existence and quantum of DPS to be refunded, which was not even an issue before the Commission in the Impugned Order. The scope of the present appeal is confined to the adequacy of the rate of interest allowed on the refund of DPS, not to the determination of whether DPS was realized or adjusted.

12. It is a settled principle of law that in appellate proceedings, the respondent cannot be permitted to raise any new contention which was not urged before the court of first instance. The scope of appeal is confined to examining the correctness of the decision rendered. Accordingly, we feel unnecessary to delve any further on the aspect of amount of DPS to be refunded and shall proceed with the adjudication of the issue in the Appeal i.e. rate of interest for refund of DPS amount.

13. The State Commission in the Impugned Order has held that DVC is not liable to get DPS on account of payment of AMG bills in installments and amount realized to be adjusted/paid along with interest of 6 %; the relevant extract of the Impugned Order is given below:

“The prayer of the petitioner is partly allowed to the extent that the DPS realized on AMG charges will be adjusted/paid in the account of the petitioner alongwith interest at a rate of 6% per annum within ninety days of this order”.

14. Appellant is aggrieved by the award of interest at the rate of 6% per annum, and submitted that it is ex facie inadequate and contrary to the rate of interest contemplated under the provisions of the JSERC Electricity Supply Code as it categorically provide that any refund of excess payment shall carry interest at the same rate at which DPS is leviable. The Appellant placed reliance upon the judgment of the Supreme Court in ***Rajnesh Sharma reported in 2025 SCC Online SC 2061***.

15. Learned counsel on behalf of the State Commission submitted that Appellant has claimed an DPS interest rate of amount 24 % for the refund, and has erroneously relied upon the provisions of Clause 10.7.4 of the JSERC (Electricity Supply Code) Regulations, 2015 (**“Regulations 2015”**), since it does

not pertain to excess payments made in advance, but specifically governs cases involving excess payments arising out of disputed bills. It was further submitted that Clause 10.6, independently governs advance payment of bills. The Appellant has nowhere contended that any of the bills in question were disputed nor has it averred that the alleged excess payment was made pursuant to any disputed or erroneous billing and therefore Clause 10.7.4 of the JSERC (Electricity Supply Code) Regulations, 2015, which is expressly applicable to cases involving disputed bills, is wholly inapplicable. It is profitable to refer to the clause 10.7.4 of the Regulations 2015: -

“10.7 Billing in case of disputed Bills

.....

10.7.4 If the consumer has paid any excess amount, it shall be refunded to the consumer within 15 days or, if consumer opts, be adjusted within two subsequent bills. The Distribution Licensee shall pay to the consumer interest charges at the rate equivalent to the delay payment surcharge as per tariff on the excess amount outstanding on account of such wrong billing from the date of payment till the date of refund or adjustment in subsequent bills”.

16. We note that clause 10.7.4 is a part of clause 10.7 dealing with “Billing in case of disputed Bills”, and under this clause, on receiving complaint from the consumer, the distribution Licensee to acknowledge the consumer’s billing complaint, assign complaint number and if the complaint is found to be correct by the Distribution Licensee, a revised bill to be issued and on any excess amount paid, the licensee to pay interest equivalent to DPS. The present issue does not arise from disputed bills, neither any complaint registered by the Appellant and nor any complaint number assigned and consequently no revised bill has been generated leading to refund of excess amount paid by the customer and therefore in our view the Clause 10.7.4 of above referred Regulation is not applicable.

17. State Commission has referred to clause 10.6 of Regulation 2015 to contend the applicability of SBI interest rate for Savings Bank account to the present case. The referred clause is extracted hereunder:-

“10.6 Advance Payment of Bills

.....

10.6.3 Bills of the consumers opting for this arrangement shall show the amount deposited by the consumer, amount adjusted against the electricity dues after each billing cycle and the balance left. On the amount remaining outstanding from such advance deposits, interest shall be paid at the State Bank of India's prevailing interest rate for Savings Bank account. This interest computation will be done quarterly”.

18. In our view, the present issue does not also pertain to outstanding advance deposit for applicability of clause 10.6 rather pertains to non-applicability of DPS on account of payment of AMG in installments, and amount recovered on this aspect to be refunded and what should be the applicable interest rate for such refund. In the Impugned Order, State Commission has not referred to any regulation while allowing such refund at 6 % per annum interest rate.

19. The Appellant has sought enhancement of the rate of interest on refund of DPS amounts, contending that the rate of 6% per annum allowed by the State Commission is inadequate. In support of this plea, reliance was placed on the judgment of the Hon'ble Supreme Court in **“Rajnesh Sharma v. Business Park”**; **2025 SCC OnLine SC 2061**, wherein the Court, while dealing with the issue of delayed handover of plots by a builder, held that although parity in interest rate charged by the builder on delayed payments cannot be granted to the buyer as a rule of thumb, in the facts of that case where there was inordinate delay in handing over the possession, the buyer was entitled to parity in interest rate as a matter of fairness and restitution.

20. We have carefully considered the ratio of the aforesaid judgment. The principle enunciated therein was applied in the peculiar factual matrix of a consumer dispute involving delayed possession of immovable property, where the builder had unjustly enriched itself by charging penal interest from the buyer on the payment instalments while failing to discharge its reciprocal obligation. The parity in interest rate was granted to ensure equity between the parties.

21. In contradistinction, the present case does not involve delayed possession or reciprocal contractual obligations of the nature considered in *Rajnesh Sharma (Supra)* and therefore in our considered view the ratio of *Rajnesh Sharma* judgement cannot be mechanically imported into the present case, as the factual substratum and the nature of obligations are materially distinct.

22. It is of relevance to refer to the Section 62 (6) of the Electricity Act 2003, as reproduced hereunder:

“If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee”.

Considering the provision contained in this section, and equating the recovery of DPS by DVC with the recovery as stipulated in section 62 (6), we feel it would be in the interest of justice to apply SBI prime Lending Rate on the amount of DPS to be refunded.

ORDER

In view of above deliberations, we set aside the Impugned Order on this issue and allow an interest rate equivalent to SBI Prime lending rate applicable from time to time on the DPS realized on AMG charges by DVC till the same is paid by DVC to Appellant or adjusted in the bills of Appellant.

The Captioned Appeal and pending IAs, if any, are disposed of in these terms.

PRONOUNCED IN THE OPEN COURT ON THIS 29th DAY OF MAY, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

REPORTABLE / NON-REPORTABLE

Pr/dk/ag