

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

APPEAL No. 227 of 2025 & IA No. 1092 of 2025

Dated: 24.04.2026

Present: **Hon'ble Mr. Virender Bhat, Judicial Member**
Hon'ble Mr. Ajay Talegaonkar, Technical Member

IN THE MATTER OF:

Damodar Valley Corporation
Through its Manager (Communication),
DVC Headquarters, DVC Towers,
VIP Road Kolkata- 700054

...Appellant(s)

Versus

(1) Jharkhand State Electricity Regulatory Commission
Through its Secretary,
1st Floor, Jharkhand State Housing Board,
(Old Headquarter), Harmu Housing Colony,
Ranchi, Jharkhand- 834002.

(2) Association of DVC HT Consumers of Jharkhand
Through its Joint Secretary
Kalyani Apartment, 1st Floor,
Gandhi Chowk,
Giridih- 815301 Jharkhand.

...Respondent(s)

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JUDGEMENT

PER HON'BLE MR. AJAY TALEGAONKAR, TECHNICAL MEMBER

1. The present Appeal has been filed by M/s. Damodar Valley Corporation ("Appellant"/ "DVC") against the order dated 27.05.2025 whereby Jharkhand State Electricity Regulatory Commission ("JSERC"/ "Respondent No. 1") in Case (Tariff) No. 13 of 2024 has undertaken True-up for FY 2023-24, Annual Performance Review ("APR") for FY 2024-25 and Aggregate Revenue Requirement ("ARR") for FY 2025-26 respectively for its distribution business in the State of Jharkhand.

Description of the Parties

2. DVC is a statutory body incorporated under the Damodar Valley Corporation Act, 1948 ("DVC Act").

3. The Respondent No. 1 is JSERC established by the Government of Jharkhand under Section 17 of the Electricity Regulatory Commission Act, 1998 on 22.08.2002.

4. Respondent No. 2 is Damodar Valley Power Consumers Association (“DVPCA”), which is an association of consumers having industries in Damodar Valley area.

Factual Matrix of the Case

5. The Appellant, DVC performs multifarious functions including generation, transmission, distribution and retail supply of electricity in the Damodar Valley area covering parts of the States of Jharkhand and West Bengal.

6. DVC undertakes generation of electricity and sells it to West Bengal State Electricity Distribution Company Limited (“WBSEDCL”) and Jharkhand Bijli Vitran Nigam Limited (“JBVNL”).

7. DVC also undertakes inter-State transmission of electricity and operates a unified deemed inter-State transmission system. In addition, DVC is a deemed distribution licensee and undertakes retail supply of electricity in its command area in the States of Jharkhand and West Bengal.

8. The tariff for DVC’s generating stations and transmission & distribution system is determined by the Central Electricity Regulatory Commission (“CERC”). Retail supply tariff in the State of Jharkhand is determined by the Jharkhand State Electricity Regulatory Commission (“JSERC”) and in West Bengal by the West Bengal Electricity Regulatory Commission (“WBERC”).

9. On 27.05.2025, JSERC issued the Order in Case No. 13 of 2024 for True-up for FY 2023-24, APR for FY 2024-25 and ARR for FY 2025-26 for DVC’s distribution business in the State of Jharkhand.

10. Aggrieved by the Impugned Order dated 27.05.2025, passed by JSERC in Case (Tariff) No. 13 of 2024, DVC has preferred the present Appeal.

11. The Appellant has prayed for the following relief before us:

“(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."*

12. 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.

13. As recorded 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. Further, the Learned Counsel for the Appellant submitted that liberty may be granted to them to file fresh appeal on the other issues. **Accordingly, in this judgement we are only dealing with the issue of NTI.**

Submissions of the Appellant-DVC

14. It is contended by DVC 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.

15. 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.”

16. 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.

17. 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.

18. 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.

A. INCORRECT FINDINGS

19. The Appellant has submitted that in 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.

20. 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.

21. 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.

22. It is further submitted that in the previous tariff proceedings, JSERC has never required segregation of the Annual Accounts of DVC. The practice has consistently been limited to seeking segregation of “Other Income” as reflected in the audited accounts which has always been duly provided by DVC. In the present proceedings, however, even such segregation was not specifically sought rendering the adverse finding unjustified.

23. 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.

24. 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.

25. About 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.

26. 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.

27. 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.

28. Regarding 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.

29. Regarding 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

B. JUDGEMENT DATED 15.09.2025 PASSED BY THIS TRIBUNAL IN APPEAL NO. 275 OF 2015 AND BATCH IS PER INCURIUM

35. It is contended that the State Commission has failed to take into account the

provisions of the WBERC Tariff Regulations, in particular Regulation 1.2.1 (Ixxi) read with Regulation 5.20 which are relevant for determination and characterization of NTI. The Appellant further submits that the binding judgment dated 23.11.2007 passed by this Tribunal in Appeal No. 271 of 2007 and batch has not been duly considered. In particular, paragraph 111 of the said judgment which holds that the entire transmission system of DVC is integrated and that jurisdiction for determination of transmission and distribution tariff vests with the Central Commission has been overlooked. It is submitted that the Tribunal had expressly rejected any segregation of DVC's composite network into transmission and distribution segments and treated the entire network as a deemed inter-State transmission system (ISTS). It is further submitted that the Commission has ignored the subsequent final orders of this Tribunal dated 05.02.2024 in Appeal No. 845 of 2023 and dated 15.10.2024 in Appeal No. 332 of 2024. The Appellant also contends that the State Commission has failed to adjudicate upon the interlocutory application raising objections to the locus standi of DVPCA, which is a company incorporated under Section 8. The Appellant submits that it has challenged the judgment dated 15.09.2025 passed in Appeal No. 275 of 2015 and batch before the Hon'ble Supreme Court by way of Civil Appeal Nos. 013634-013636 of 2025. The Hon'ble Supreme Court, by order dated 25.11.2025, has directed that any consequential order to be passed by the West Bengal Electricity Regulatory Commission shall not be implemented until the next date of hearing. The next date of hearing in the said matter is 25.03.2026.

C. JSERC POWER REGULATORY ACCOUNTING REGULATION 2016 ("JSERC PRA REGULATIONS)

36. It is contended that the issue relating to applicability of the JSERC PRA Regulations was raised for the first time during oral submissions. There is no finding, analysis or discussion in the Impugned Order regarding the applicability or manner of application of the JSERC PRA Regulations. Further, neither the Impugned Order nor any prior tariff proceedings contain any direction requiring

DVC to prepare or submit Regulatory Accounts in accordance with the said Regulations. It is submitted that at no stage has such a requirement been enforced upon DVC, and therefore, the PRA Regulations cannot be retrospectively relied upon to justify or sustain the findings recorded in the Impugned Order.

37. The Appellant submits that, in any case, the PRA Regulations are not applicable to DVC. It is contended that the said Regulations are not in conformity with Sections 33, 45, and 47 of the Damodar Valley Corporation Act which govern the preparation and audit of DVC's accounts under Part IV of the Act. The continued applicability of Part IV of the DVC Act has been affirmed by this Tribunal in the judgment dated 23.11.2007 and by the Hon'ble Supreme Court in *Bhaskar Shrachi Alloys Ltd. v. DVC*, (2018) 8 SCC 281.

38. It is further submitted that, as per Regulation 3.1(16) read with Regulation 3.1(17) and Regulation 3.1(6) of the PRA Regulations, Regulatory Accounts are confined to the "regulated business" under the jurisdiction of JSERC and do not extend to entity-wide operations. In the case of DVC, the only business regulated by JSERC is the distribution business in the State of Jharkhand. Accordingly, even if the PRA Regulations were to apply, the Regulatory Accounts could, at best, relate only to the distribution segment. The generation and transmission (G&T) activities of DVC fall outside the regulatory domain of JSERC and cannot be brought within the scope of Regulatory Accounts.

39. The Appellant further submits that G&T activities as well as any other functions of DVC cannot be treated as "other business" of the distribution segment so as to be included within the Regulatory Accounts framework.

40. It is contended that Regulations A-4(iv) and A-4(ix) of the PRA Regulations which mandate segregation of regulated businesses are inconsistent with the scheme of Part IV of the DVC Act. DVC operates as a vertically integrated utility

and its power operations do not recognize the kind of segmentation envisaged under the PRA Regulations.

Submissions of the Respondent No. 1- JSERC

A. The “distribution asset”/ capital base or manpower of DVC’s distribution business

41. The JSERC submits that in its Order dated 27.05.2025, it had rejected the contention of DVC that it does not possess any distribution assets or that no capital base or manpower is attributable to its distribution activities. The findings of the JSERC in this regard are rooted in the provisions of the Electricity Act, 2003 as well as the judicial precedents governing the field.

42. It is contended that DVC is undisputedly a deemed “distribution licensee” under the Electricity Act, 2003 and is bound by its provisions. In its capacity as a distribution licensee, DVC undertakes distribution business and the retail supply of electricity. By virtue of the fourth proviso to Section 14 of the Electricity Act, the provisions of the DVC Act, continue to apply only to the extent that they are not inconsistent with the Electricity Act. Consequently, the statutory scheme of the Electricity Act prevails. Sections 2(17) and 42(1) of the Electricity Act which define a “distribution licensee” and prescribe its duties, unequivocally establish that the existence of a distribution system is an essential and inseparable requirement for any entity discharging distribution functions.

43. The JSERC further submits that the Electricity Act clearly distinguishes between “dedicated transmission lines”, “transmission lines” and a “distribution system” under Sections 2(16), 2(72) and 2(19) respectively. Any system of wires and associated facilities extending up to the point of connection with the consumer’s installation necessarily constitutes a distribution system. Therefore, the very nature of DVC’s activities in supplying electricity to end consumers implies

the existence of such a distribution network. It is also submitted that the statutory framework under the DVC Rules, 1948, particularly Annexure-1 Parts I and II relating to the Capital Account supports the position that DVC is required to maintain and identify its capital assets, including those attributable to distribution functions.

44. With respect to the judgment dated 23.11.2007 passed by this Tribunal in Appeal No. 273 of 2006, the JSERC submits that the said judgment does not negate the existence of a distribution system within DVC. It is a settled principle that a judgment is an authority for what it decides and not for what may be inferred from it. In the said decision, the Tribunal held that, for the limited purpose of tariff determination, the transmission systems of DVC were to be treated as a unified deemed inter-State transmission system. It was also acknowledged that the definition of “transmission line” excludes lines forming an integral part of the distribution system. Further, in paragraph 112 K.1, the existence of a distribution network and its capital base was not disputed; rather, only the determination and segregation of such assets remained to be undertaken. Even the submissions of DVC in that proceeding indicate that the issue was not the absence of a distribution system but the practical difficulty in precisely segregating distribution assets from the overall network. In this context, the Respondent submits that the reasoning adopted by the JSERC in the Impugned Order that while the AFC of the transmission and distribution network are determined by the CERC, the loss trajectory for the entire network, including distribution assets, is determined by the respective State Commissions; must be understood in light of the inherent and indispensable existence of a distribution base. The said reasoning cannot be read in isolation or in a truncated manner so as to support the contention that no distribution system exists.

45. The JSERC further places reliance on the judgment dated 15.09.2025 passed by a Co-ordinate Bench of this Tribunal in Appeal No. 275 of 2025, wherein

it has been categorically held, as a matter of principle, that DVC does possess distribution assets. In the said judgment, the contention of DVC that only the DPS qualifies as NTI was expressly rejected. It is submitted that although a Civil Appeal has been preferred against the said judgment, no stay has been granted, and therefore, the ratio laid down therein continues to hold the field and remains binding in principle. The Respondent further submits that DVC cannot seek to distance itself from the aforesaid judgment, particularly in view of its own conduct. Before the Commission, DVC had itself relied upon the order passed by the West Bengal Electricity Regulatory Commission in support of its submissions.

46. It is also contended that DVC has consistently failed to comply with the directions issued by the JSERC requiring it to furnish details of its fixed assets. Despite repeated opportunities and specific directions to create and maintain a Fixed Asset Register, as recorded in the Orders, DVC has not provided the requisite information. In such circumstances, DVC cannot be permitted to raise any grievance regarding the alleged non-determination of its distribution asset base.

B. The necessity and power of the Commission to call for separate details to effectively discharge its mandate for determination of tariff for distribution business/ retail supply of electricity and the concomitant obligation of DVC to furnish such information

47. The JSERC submits that the issue at hand requires an interpretation of the relevant statutory provisions in accordance with the principle of harmonious construction. It is contended that primacy of one statute over another can arise only in a situation where the provisions are wholly irreconcilable; in the absence of such inconsistency, both statutes must be read in a manner that gives effect to each.

48. In this regard, reliance is placed on Section 62(2) of the Electricity Act, 2003 which expressly empowers the Appropriate Commission to require a licensee to furnish separate details, as may be specified, in respect of generation, transmission and distribution for the purpose of tariff determination. It is submitted that this enabling provision is integral to the statutory mandate of the Commission to determine tariff and the exercise of prudence check forms an essential and inseparable component of such determination.

49. With respect to the provisions of the DVC Act, the JSERC submits that Section 45, which pertains to the preparation of the Annual Report, merely requires the DVC to furnish information under specified heads, including electrical energy with “particular reference” to certain aspects. However, this provision is neither exhaustive nor does it address, much less prohibit, the segregation of details within the head of electrical energy. Similarly, reliance placed by DVC on Section 47 of the DVC Act, relating to Accounts and Audit, is misplaced. It is reiterated that in the event of any inconsistency, the Electricity Act would prevail and the provisions of the DVC Act must be interpreted harmoniously so as not to dilute or defeat the Commission’s statutory authority to call for separate and detailed information necessary for tariff determination.

50. The JSERC further submits that the DVC Rules, 1948, particularly Rules 21, 22 and 25 read with Annexure-I, themselves demonstrate that the concept of segregation of electrical activities is not alien to DVC. The Rules, in the context of Capital and Revenue Accounts provide for bifurcation of electrical energy into Hydro Electric and Thermal Schemes with further segregation into generation, transmission, and distribution components. Although certain amendments were introduced in 2012, Annexure-I continues to refer to accounts for the year ending 31st March, 19, indicating the continued relevance of the accounting structure. It is, therefore, submitted that neither the DVC Act nor the Rules framed thereunder can be interpreted in a manner that curtails or denudes the powers of the

Appropriate Commission under the Electricity Act, 2003 (“Act”) to seek separate and detailed information for effective tariff determination.

51. The Respondent No. 1 submits that the JSERC (Power Regulatory Accounting) Regulations, 2016, framed under Section 181 of the Electricity Act, 2003 and drawing authority from Section 62(2) are fully applicable to all regulated entities operating within the State of Jharkhand, including deemed distribution licensees such as DVC (Regulation A2). It is submitted that the definitions of “Accounting Statement” and “Regulatory Accounts” under Regulations 3.1(2) and 3.1(16) are wide in scope and expressly include reports of the CAG and statutory accounts prepared under any other applicable law. Further, Regulation A4, dealing with the preparation of an Accounting Manual, particularly clauses 4.1(iv), (ix) and (xi) require categorisation of activities and recording of segregated information. Regulation 7.1 mandates that every licensee maintain separate financial, operational, and accounting records, based on actuals, in respect of regulated and other business activities. Additionally, Regulation 6.4 obligates the auditor to specifically report the break-up of assets attributable to wheeling and supply functions.

52. Such requirements must be harmoniously construed with the provisions of the DVC Act, and do not give rise to any irreconcilable conflict. It is reiterated that neither the provisions of the DVC Act nor the Rules framed thereunder can be interpreted in a manner that frustrates or dilutes the statutory mandate of the Commission under the Electricity Act. It is further submitted, relying on settled legal principles, that the mere non-mention of a specific statutory provision in an order does not render the order invalid, so long as the power exercised is otherwise traceable to law.

53. The JSERC further places reliance on the JSERC Regulations, 2020, wherein Regulation 3.1 reiterates and incorporates the essence of the 2016

Regulations by defining “Accounting Statement” to include reconciliation statements reconciling total assets, expenses and revenues of the entity as a whole, as well as separately for each regulated business and unregulated activity. It is submitted that these Regulations bind DVC and reinforce the requirement of maintaining segregated accounts for different business segments.

54. With regard to the judgment dated 23.11.2007 passed by this Tribunal, the JSERC submits that the said judgment does not deal with or determine the issue presently raised, namely the requirement of maintaining segregated accounts and furnishing information specific to the distribution business in the context of Section 62 of the Electricity Act and the scheme of the statute vis-à-vis Sections 45 and 47 of the DVC Act. On the contrary, the principle of harmonious construction has been acknowledged in the said judgment itself. It is further submitted that the judgment in the case of Bhaskar Shrachi, arising from the aforesaid decision dated 23.11.2007, did not examine or adjudicate upon the necessity of maintaining segregated accounts for different segments of the power business. This position has been duly recognised in the interim order dated 15.10.2024 passed by this Tribunal in Appeal No. 332 of 2024. Moreover, in its order dated 05.02.2024 passed in Appeal No. 845 of 2023, this Tribunal has already concluded that there is a necessity to ascertain the break-up of NTI into generation, transmission and distribution components and that only such NTI as relates to the distribution business in the State of Jharkhand ought to be considered for the relevant purposes.

C. The treatment or methodology adopted for computing DVC’s NTI

55. The Respondent No. 1 submits that the Commission has duly considered both the final order dated 05.02.2024 passed in Appeal No. 845 of 2023 and the interim order dated 15.10.2024 in Appeal No. 332 of 2024, and has, in the absence of complete and reliable data adopted a process of rational approximation by

drawing guidance from the principles laid down therein. It is emphasised that the Commission has not treated the entire NTI as attributable to the distribution business.

56. Further, the JSERC has correctly observed that neither of the aforesaid orders held that only DPS qualifies as NTI, a contention which now also stands rejected by the Co-ordinate Bench of this Tribunal. Even in its additional submissions, DVC failed to segregate “other income” within the power vertical and persisted with its stand that it has no capital base for distribution. Faced with such lack of information, the JSERC examined the limited material available, considered the justifications advanced by DVC and identified eight heads of income which could not be regarded as NTI attributable to the distribution business. Excluding these heads and DPS, the JSERC adopted a prudent and reasonable approach by apportioning the remaining sub-heads qualifying as “other income” attributable to distribution, in light of Regulations 10.53 and 10.54 of the JSERC Regulations, 2020 which define NTI and enumerate its components. The Commission found the explanations offered by DVC to be either insufficient or unacceptable, particularly after rejecting its contention regarding absence of distribution assets and clarifying that capital expenditure is not a necessary precondition for determination of NTI. The JSERC considered the head Dividend Non-Current Investment which DVC claimed to be interest income arising from investments made through a separate fund. However, the JSERC noted that no substantiating documents were provided nor was it demonstrated that such funds had no nexus whatsoever with the distribution business.

57. With respect to the methodology adopted for approximation, it is submitted that the JSERC considered the total revenue derived by DVC from sale of power, including retail, bilateral exports, cross-border and power exchanges. From this aggregate, only that portion attributable to retail supply i.e., firm sale to consumers or licensees at tariffs determined by the JSERC was taken into account. This

component was further apportioned to the Jharkhand Command Area. It is submitted that the said methodology is reasonable, rational and has also found acceptance in principle by the Co-ordinate Bench.

58. The JSERC reiterates that such an approach became necessary owing to DVC's repeated non-compliance with the directions, issued in successive orders, to furnish segregated balance sheets for its distribution business. The JSERC further submits that DVC has taken contradictory positions by contending, on the one hand, that the heads specified in Regulation 10.54 constitute income from "Other Business" and on the other hand asserting that it has no "Other Business" at all. It is clarified that the definition of NTI under the 2020 Regulations excludes income from "Other Business" and not "Other Income".

59. It is also submitted that the grievance of alleged double accounting is untenable particularly in light of DVC's own submissions in the present appeal. It is undisputed that NTI pertaining to the distribution business falls within the jurisdiction of the Commission and such jurisdiction is not ousted merely because such NTI may not have been accounted for before the Central Commission.

60. Without prejudice to the above, it is submitted that in the event this Tribunal is inclined to differ from the approximation methodology adopted by the Commission, appropriate guidance may be provided for evolving an alternative formulation for determination of NTI attributable to the distribution business.

Submissions of the Respondent No. 2- DVPCA

I. EXISTENCE OF DISTRIBUTION ASSET BASE

61. Appellant's principal contention that it does not possess any distribution assets base is fundamentally flawed both in law and fact. DVC admittedly supplies

power to retail consumer (firm consumers) within its command area, spread over in the contiguous territory of Jharkhand & West Bengal. DVC supplies to its firm consumers through a system of wires and associated facilities, therefore, does have a distribution asset base as defined under Section 2(17); 2(19) read with Section 42(1) of the Electricity Act, 2003.

62. This issue is no longer res integra as this Tribunal in Appeal No. 275 of 2015 dated 15.09.2025 has recognised DVC's distribution asset base. In fact, DVC's reliance on Para 110-111 read with Para K.1 of the Judgement dated 23.11.2007 is self-contradictory, as the Tribunal in the DVPCA Judgement held- *"Therefore, it cannot be said that DVC does not have a distribution asset base, as also held by this Ld. Tribunal in the judgment dated 23.11.2007 passed in Appeal No. 271 of 2006 & batch..."*.

63. Notably, supply to a consumer (including HT/EHT) cannot be treated as transmission of electricity as held by this Tribunal in O.P.T.C.L. vs. OERC (2012 SCC OnLine APTEL 206). The Appellant has not refuted this settled position of law and has also failed to distinguish the applicability of the DVPCA Judgment in the present proceedings.

II. CAPITAL EXPENDITURE IS NOT A CRITERION FOR NTI

64. DVC's contention that it does not claim any expenditure (including manpower) for its distribution business in Jharkhand & West Bengal is misplaced and has been rejected both in the Impugned Order and by this Tribunal in DVPCA Judgment.

65. CERC determines the Annual Fixed Charges (AFC) for DVC's Generation and unified T&D system. This becomes an item of expense in ARR for distribution tariff and treated similarly in both the state of Jharkhand & West Bengal. In other words, AFC approved by CERC cannot be recovered unless it becomes an item

of expense in the distribution tariff and approved by respective SERCs under Section 62 of EA, 2003. NTI is not an expenditure but income to be reduced from the ARR.

66. Neither the JSERC nor the WBERC Tariff Regulations prescribes any imaginary “capital expenditure” criteria for recognition of NTI. Further, Tribunal’s observations in the DVPCA Judgment reinforce this position- **“88. *The provisions dealing with NTI under the Tariff Regulations do not lay down any capital expenditure criteria, considering, the Tariff Regulations are binding and DVC was required to provide all the specific heads of income delineated in Form 1.26. DVC cannot withhold information that is required to be submitted under Form 1.26, which forms part of the Tariff Regulations.*”**

67. WBERC and JSERC Regulations are Pari Materia: The regulatory treatment of NTI is identical under the WBERC Regulations and JSERC Regulations.

68. NO DOUBLE ACCOUNTING OF NTI BY JSERC: CERC till date has not approved any NTI for DVC’s Generation and unified T&D business and DVC has failed to place any such orders of CERC on record, approving such NTI:

- A. JSERC has excluded such heads of Other Income under S. No.1 (a) to (h) of Table 63 of Impugned Order which have no nexus to distribution business in its entirety
- B. In absence of segregation of ‘Other Income’ within Power Business of DVC, JSERC in light of directions passed in Appeal No. 332 of 2024 vide Order dated 15.10.2024 carried out rational approximation and based on ratio of revenue derived from retail supply (firm) to the total revenue from power business has allocated such heads of other income. *[Notably, such rational approach also resonated with this Tribunal in the DVPCA Judgement]*
- C. ‘Income from sale of Scrap’ is provided for both under the CERC and JSERC Regulations, however, in respect of unified T&D assets, DVC has refused to

furnish any data in the prescribed format before either of the regulators and has made misleading statements without adducing a single order till date where any NTI has been considered by CERC. The details of the NTI claimed/ approved for determination of Tariff for unified T&D system before CERC, for relevant period, derived from records of CERC and JSERC are tabulated herein below:

PARTICULARS	CERC	JSERC
Tariff Regulations	Regulation 62 of CERC (Terms and Conditions of Tariff) Regulations, 2019	Regulation 10.53 & 10.54 of JSERC (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2020
	Regulation 84 CERC (Terms and Conditions of Tariff) Regulations, 2024	
Control Period	Control period from FY 2019-20 to 2023-24	True-up for 2023-24 (Impugned Order)
	Control Period from FY 2024-25 to 2028-2029	APR for 2024-25 & Tariff/ARR for FY 2025-26 (Impugned Order)
NTI Claimed by DVC & Approved by Appropriate Commission	<u>Tariff for control period from FY 2019-20 to 2023-24:</u> - DVC did NOT submit any claim for NTI for its unified T&D assets in its tariff petitions and <u>Form-14</u>; - Ld. CERC did NOT approve any NTI in the tariff order for its T&D assets. <u>Truing-up of Tariff for FY 2019-20 to 2023-24 & Determination of Tariff from FY 2024-25 to 2028-29:</u> - DVC did not claim for NTI for its T&D assets in its tariff petitions and <u>Form-14</u>; - Proceedings are pending before CERC	In I.O., JSERC has applied rational approximation to ascertain NTI attributable to Distribution business as follows: (i) Items excluded in its entirety which have no nexus to Distribution business; (ii) Items not covered under (i) allocated rationally to the extent of income attributable to DVC's distribution business.
NOTE: Since no NTI has been claimed by DVC in proceedings pending before CERC in relation to the unified T&D system, till date, hence, there cannot possibly be any double accounting.		

III. DVC's FAILURE TO PROVIDE SEGREGATED 'OTHER INCOME' AS MANDATED

69. As per the Sections 62(1), (2), (5) & (6), 64 and 181 (2) (ze) of the Electricity Act 2003 read with the JSERC (Power Regulatory Accounting) Regulations, 2016 and Tariff Regulations, 2020, occupies the field of Electricity Regulation and unequivocally obligates DVC to furnish separate details for its regulated business (i.e., Distribution by JSERC/ WBERC) from its other activities -Generation/ Transmission in the manner sought by the Commission.

70. On the interplay of DVC Act vis-à-vis Act as to separation of accounts, following is noteworthy:

- A. The 4th Proviso of Section 14 of the Act attracted only in cases of inconsistency between the provisions of the two Acts. Notably, the provisions cited by DVC, namely, Section 45; 47 & 59 of DVC Act (rules framed hereunder) are neither inconsistent with the provisions of the Act (Regulations thereunder) nor has DVC produced provisions which bars it from providing segregated details of its other income. Reliance placed on this Tribunal's Judgement dated 23.11.2007 in DVC vs. CERC & Ors. (**2007 SCC OnLine APTEL 129**).
- B. DVC Act has not been saved in terms of Section 173 or 185 of the Act and in fact, Section 174 has given overriding effect to the latter. Any provisions of DVC Act being inconsistent with the Tariff Regulations would not be applicable, as held in DVC vs. CERC (**2012 SCC OnLine APTEL 97**).
- C. JSERC Regulations are binding not only on DVC but cannot also be ignored by the Tribunal in absence of its powers of judicial review under Section 111 of the EA, 2003 as held in Fatehgarh Badla Transmission Company Ltd. vs. CERC & Ors. (**2023 SCC OnLine APTEL 16**).
- D. Contrary to DVC's contention, the Order dated 15.10.2025 in Appeal No. 332 of 2024, clarified that the Bhaskar Shrachi judgment is only in the context of DVC's "other business" characterized as socially beneficial activities and did not examine or dispense with the requirement of maintaining segregated accounts

within DVC's power business, therefore, the Bhaskar Shrachi judgment has no application to present dispute.

E. Contending at this very stage that DVC is not obligated to furnish segregated 'Other Income' in its audited accounts, is in violation of DVC's own undertaking as recorded in Order dated 05.02.2024 in Appeal No. 845 2023.

71. The explicit directives issued by JSERC to DVC to submit separate balance sheet for its distribution business have been constantly disregarded (similar to undertaking given before this tribunal) thereby evidencing blatant circumvention of law (a) Order dated 30.09.2024 [True-up- FY 2022-23]; (b) Impugned Order [True-up- FY 2023-24]. In fact, the true-up petition in the Impugned Order, was filed in violation of similar directions issued to DVC in the Tariff Order dated 22.01.2024 for FY 2023-24. In fact, similarly directives for segregation of accounts and submission of Fixed Asset Register were issued in the Impugned Order which has not been Impugned by DVC till date.

72. Further, this Tribunal in *Tata Power Delhi Distribution Limited vs. DERC* (**2019 SCC OnLine APTEL 10**) has upheld the statutory mandate on the distribution licensee to maintain segregated books of account to avoid any misconception/ misinterpretation of Income from its other businesses in the regulated business. The Tribunal rejected the jurisdictional issues raised therein, affirming the State Commission's decision.

73. DVPCA submitted that DVC has been unjustly allowed to be enriched all these years as it has managed to evade both the SERCs & the CERC from consideration of its NTI at the expense of the consumer interest. The distribution assets of DVC cannot possible be mapped by any entity other than DVC itself. Similarly, Trial balance or ledgers for DVC's Power business or any auditory certificate, providing segregation of 'Other Income' within power business is also only within the knowledge of DVC. A regulated entity cannot be permitted to benefit

from its own failure to provide information as mandated. Needless to add, no exemption is available to a licensee with respect to the submission of the required data/ information. In the absence of complete data, a reasonable cost reflective tariff as per Section 61 cannot be determined.

74. DVC's claim that Income from Investment arises from a purported 'separate fund' is untenable and has been rejected in the Impugned Order, as DVC failed to prove that such the funds were unrelated to its distribution business. Under the proviso to Regulation 10.54 of the JSERC Tariff Regulations, 2020, the burden of proof lies squarely on DVC.

75. In the case of DVC, 'Firm Sale' denotes supply to retail consumers within its command areas of West Bengal and Jharkhand. The expression 'Bilateral Export' denotes revenue earned from bilateral export sales to beneficiaries and the applicable transmission charges are governed by the respective PPAs and becomes part of the revenue from bilateral export. Given DVC's absence of segregated accounts and refusal to furnish asset and expense segregation, any determination based on the expense side was rendered impracticable. In these circumstances, JSERC justifiably relied on the revenue side, approximation based on 'Revenue from Firm Sale' as to the 'Total Revenue from Power business' which resonated with this Tribunal in the DVPCA Judgment. Non-Tariff Income being an income item was prudently apportioned in face of DVC's failure to submit separate details in order for R1 to effectively discharge its mandate for determination of distribution tariff in line with the cost-reflective principles. Such determination cannot be deferred indefinitely merely due to DVC's own failure to comply with statutory and regulatory requirements.

76. In terms of DVPCA Judgment the determination and apportionment of NTI

cannot be rendered otiose merely due to the absence of identification of asset, in face of DVC's refusal to furnish information as per statutory mandate. It is to instill transparency, an interim methodology was provided, till such identification of the distribution asset base takes place. Accordingly, a distribution system being a sine qua non for a distribution licensee, DVC's contrary plea is ex facie untenable and merits rejection.

Our Analysis and Conclusions

77. We have heard the Learned Senior Counsel and Learned Counsel for the Appellant-DVC and the Learned Counsels for the Respondents JSERC and DVPCA. We have also perused written submissions filed by the Learned Counsels. Now, we proceed to analyse the issues at hand.

78. As mentioned in the paragraph 13, we are only dealing with the issue of NTI in this judgement.

79. Based on the issues emerging from the submission of the parties, we have divided our analysis and conclusions in three parts:

- (i) Part I: Essential requirement for an item to be considered as NTI under prevailing regulatory arrangement governing tariff for DVC's assets, and findings on specific items considered by JSERC as NTI in the Impugned Order
- (ii) Part-II: The Guiding Framework for segregation of network assets of DVC into distribution system and transmission system
- (iii) Part-III: Segregation of accounts

Part I: Essential requirement for an item to be considered as NTI under prevailing regulatory arrangement governing tariff for DVC's assets, and findings on specific items considered by JSERC as NTI in the Impugned Order

80. As in several judgments of this Tribunal, we recall this Tribunal's judgment dated 23.11.2007 in Appeal No, 271 of 2006 and batch ("DVC Judgement-1"). This judgement was delivered in an appeal against CERC's order wherein faced with the difficulty of bifurcation of cost of network between transmission and distribution, after analysis, the CERC had inter-alia held that 87% and 13% cost shall be attributable to transmission and distribution respectively for the purpose of tariff. This finding was set aside by this Tribunal vide aforesaid judgement. In the said Judgement, under paragraphs 112 (K.1), this Tribunal had held as under:

"K.1 One of the Respondents (GoWB) has challenged the capital base adopted by the CERC while determining the tariff. GoWB has contended that certain assets should have been treated as part of the distribution network and hence should have been taken out of the purview of tariff determined by the CERC. While the impact of the above would be revenue neutral on DVC as assets forming part of the distribution network would be eligible for tariff determination at the retail end. However, it would impact the power purchase bills of the beneficiary states. We feel that when the process of tariff determination for distribution segment of DVC takes place, the appropriate Commission would also determine the distribution network capital base. At that time DVC may approach the CERC again for adjustment of its revenue requirement and corresponding tariff."

(Emphasis supplied)

81. It must be recognised that in states, when integrated power utilities were unbundled, a transfer scheme framed by the state Government clearly brought out criteria for segregation of distribution system from transmission; though intra-state transmission and distribution, both are regulated by the State Commission. In case of DVC, it was bit complicated. Entire transmission system of DVC and its tariff (in the DVC Judgement-1 it was also held that entire transmission owned by DVC is inter-state transmission) was to be regulated by CERC while distribution tariff was

to be regulated by JSERC and WBERC, depending on the geographic location of the system. Further, no criterion was readily available for bifurcation of network elements into transmission system and distribution system. A look at the CERC's impugned order in the appeal in which this judgment was issued indicates that DVC has taken a stand that it is not possible to segregate its network assets into transmission and distribution. CERC tried to find a way out by allocating costs in certain ratio, which was rejected by this Tribunal in the DVC Judgement-1. It can be inferred from the above quoted extract of this Judgement that this Tribunal gave a transitory framework to overcome these difficulties: (i) initially, the tariff for entire network (T&D) of DVC to be determined by CERC so that there is no vacuum due to lack of tariff for distribution system, (ii) WBERC & JSERC to identify distribution system elements in their respective states and determine tariff for the same and (iii) thereafter, DVC to approach CERC to adjust tariff determined by it, after removing network elements which are found to be part of distribution system by JSERC and WBERC.

82. We note that since beginning, CERC has been determining tariff for transmission & distribution (T&D) and the same is reflected in the orders. It is discerning that what was supposed to be a transitory regulatory arrangement continues even today, as State Commissions seem to have made no serious attempt to identify network elements of DVC forming part of distribution system. During the hearing Ld. Counsel for JSERC took us through some documents to bring out that despite clear directions, DVC did not submit the information on Fixed Asset Register. This aspect was also highlighted by the Ld. Counsel for the Respondent Damodar Valley Power Consumer Association ("DVPCA"). On the other hand, Ld. Counsel for DVC took us through the proceedings under the Impugned Order, including the letter on information gap by JSERC to point out that there is not even whisper that JSERC was keen on identifying distribution assets.

83. DVC has taken the plea of unified network and has contended that CERC

has jurisdiction over T&D tariff for DVC. To support their contention DVC has referred to paragraphs 97 to 111 of the DVC Judgment-1. We have gone through the aforesaid judgment and find that it nowhere supports the contention of DVC. In fact, paragraph 104 of this judgement inter-alia records admission of Appellant-DVC that State Commissions have jurisdiction over distribution tariff. Further, in paragraphs 111 of the aforesaid judgment, this Tribunal had concluded that entire transmission system of DVC is unified deemed inter-state transmission system and the Central Commission has jurisdiction over its tariff. There is no mention of distribution being part of this unified network, as claimed by DVC. The relevant extract of DVC Judgement-1 is reproduced below:

*“104. The Appellant has submitted that its transmission system which is spread across the two states being integrated one, is to be considered as inter-State transmission and not intra-state transmission. **The Appellant concurs that the State Commissions should have the jurisdiction over the distribution and determination of tariff for retail supply of electricity.....***

...
....

*111. DVC has been supplying power from its generating stations to West Bengal Electricity Board and Jharkhand Electricity Board along with nearly 120 HT-Consumers either through inter-state transmission lines or through the point-to-point ‘dedicated transmission lines’. **We, therefore, conclude that all transmission systems of DVC be considered as unified deemed inter-state transmission system, insofar as the determination of tariff is concerned and as such regulatory power for the same be exercised by the Central Commission.**”*

(Emphasis supplied)

84. We are of the considered view that non determination of elements forming part of distribution system and its tariff by the JSERC and WBERC has led to continuation of tariff determination by CERC for distribution also (as part of T&D), which is not in line with the scheme of things envisaged in the Electricity Act, 2003 (“Act”). There appears to be a degree of hesitation in discharging the responsibility entrusted under the Act. We are intrigued by the fact that on one hand JSERC contends that its directions to furnish information on Fixed Asset Register were

repeatedly not complied by DVC (in this regard JSERC has cited its orders dated 27.05.2025, 22.01.2024 and 30.09.2024), but on the other hand it does not seem to have faulted DVC for the same. We do not agree with this sense of helplessness expressed by JSERC. In addition to provision regarding non-compliance of directions under the Act, JSERC had option to carry out investigation to identify distribution assets of DVC in the geographical area of Jharkhand. We have no doubt in our mind that such an exercise is complex and requires careful consideration. However, deferring this exercise only leads to non-conformity with the scheme of things about regulatory oversight envisaged in the Act.

85. We are of the opinion that this issue of segregation of distribution assets from total T&D network should not be deferred any further, not only because it has given rise to repeated litigation, particularly about NTI, but also because this has contributed to regulatory oversight not in conformity with the provisions of the Act. We are therefore, in Part-II of this section, setting out a “The Guiding Framework for segregation of network assets of DVC into distribution system and transmission system”. This, in turn will ensure rightful regulatory oversight as envisaged in the Act.

86. The issue of NTI has been brought to this Tribunal in several appeals earlier too. Some of the important interim or final judgements as noticed by us, and also relied upon by the parties, and the directions/findings contained therein are extracted below:

- (i) Judgement dated 05.02.2024 in Appeal No. 845 of 2023 (“DVC Judgement-2”)

“The 1st Respondent Commission’s jurisdiction to determine the tariff is confined only to the retail supply business of the Appellant within the State of Jharkhand, and not beyond. Consequently, the 1st Respondent Commission lacked jurisdiction to include the non-tariff income of the Appellant arising from its generation,

*transmission and other businesses as its non-tariff income with respect of its distribution business. **The tariff of the Appellant, with respect to its generation and transmission business, is determined by the CERC in terms of its Regulations;** determination of the tariff for its distribution business in the State of West Bengal falls within the jurisdiction of WBERC, and in the State of Jharkhand within the jurisdiction of the 1st Respondent Commission. **Even if the CERC had not taken into consideration the non-tariff income derived by the Appellant from its generation, transmission and other businesses, in determining its tariff, such an error could only have been corrected by the CERC; and the mere fact that it may have a bearing on the input cost, while determining the tariff of the Appellant's distribution business in the State of Jharkhand, would not confer jurisdiction on the 1st Respondent to reduce such non-tariff income from the annual revenue requirement of the Appellant for its distribution business in State of Jharkhand.***"

...

....

.....

*We consider it appropriate, in such circumstances, to set aside the impugned order and remand the matter to the 1st Respondent Commission to ascertain the break-up of the non-tariff income of the Appellant, as reflected in the audited accounts for FY 2006-07 to FY 2011-12, between its generation, transmission, distribution and other businesses; and **treat only the non-tariff income, relating to the Appellant's distribution business in the State of Jharkhand, as its non-tariff income** which is required to be reduced from its ARR for FY 2006-07 to FY 2011-12, and then pass an order afresh in accordance with law."*

(Emphasis supplied)

- (ii) Judgement dated 29.11.2024 in Appeal No 135 of 2024 ("DVC Judgement-3")

This Judgment referred to the DVC Judgement-2 and since herein also, JSERC was respondent, similar direction as extracted below was issued:

*“ the matter is remanded to the JSERC directing it to determine the Appellant’s non-tariff income only to the extent of its **retail supply business in the State of Jharkhand**, and not beyond.....”*

(Emphasis supplied)

- (iii) Judgement dated 15.10.2024 in Appeal No 332 of 2024 (“DVC Judgement-4”)

“44. JSERC vide remand order was directed to ascertain the component of NTI which is attributable to distribution business, there is no deliberation on this issue in the impugned order as well as whether some or all component of NTI shown under Generation and Transmission head by Appellant could be assigned to Distribution Business. The JSERC could also have undertaken the exercise of approximation on any rational basis which they choose not to do. Initially we contemplated remanding the matter again to the JSERC to undertake a rational exercise of approximation to determine the non-tariff income of the Appellant relating to its distribution business.....”

- (iv) Judgement dated 15.09.2025 in Appeal No 275 of 2015 & batch (“DVC Judgement-5”)

*“85. DVC is supplying power to its firm consumers in its command area through a system of wires and associated facilities; therefore, it does have a distribution system as defined under Section 2 (19). **The capital cost of such a distribution system should have been accounted for and approved by the WBERC while undertaking retail tariff determination, even if it falls under the total T&D system.***

86. Therefore, it cannot be said that DVC does not have a distribution asset base, as also held by this Tribunal in judgment dated 23.11.2007 passed in Appeal No.271 of 2006 & batch”

...

....

99. *Therefore, we set aside the impugned order on this count and direct WBERC to identify the distribution assets of DVC along with the corresponding costs within the T&D costs as determined by CERC.*

100. *Further, the State Commission shall determine the NTI of the distribution business after obtaining all the information from DVC in accordance with the relevant Regulation.*

101. *We also direct the State Commission to distribute the total NTI related to T&D assets between the distribution and transmission business in the ratio of the effective cost ratio of the distribution and transmission business. **Till such time the actual NTI is determined, the total T&D NTI shall be distributed between the two businesses, as an approximation after obtaining the transmission and distribution assets ratio in similar States like Bihar, Tamil Nadu, or Chhattisgarh. The same will be subject to adjustment based on the actual determination.***

87. It may be seen that the “DVC Judgement-2” holds that since tariff for generation and transmission is regulated by CERC, any omission by CERC in not considering any NTI from generation or transmission business for tariff reduction, cannot be corrected by the State Commission. **The principle that emerges from this finding is that the authority which regulates the tariff for a particular segment or activity alone is competent to determine the cost and revenue elements including NTI pertaining to that segment or activity while arriving at the ARR.** Similar is the finding in the “DVC Judgement-4”. It was perhaps inadvertently missed out that CERC is not just regulating tariff for transmission, it is regulating tariff for Transmission & Distribution system (T&D). If this fact was also noticed, perhaps, the conclusion that JSERC can consider only NTI from distribution business, would have been slightly different.

88. The direction in “DVC Judgement-3” is almost similar, except the nomenclature; here the phrase used is “retail supply business” in place of “distribution business”.

89. Respondent No. 1 and Respondent No. 2 have placed reliance of “DVC Judgement-5” to emphasise that DVC does possess distribution assets. It is submitted that although a Civil Appeal has been preferred against the said judgment, no stay has been granted, and therefore, the ratio laid down therein continues to hold the field and remains binding in principle.

90. We observe that Paragraph 85 of the “DVC Judgement-5” concludes that DVC possesses a distribution system. Furthermore, the latter part of this paragraph expresses a similar frustration to that which we had previously articulated in our analysis; that the State Commissions have not assumed the responsibility for tariff regulation of the distribution business in accordance with the provisions of the Act, and as per transitory mechanism envisaged in the “DVC Judgement-1”. In paragraph 99 of the judgement, this Tribunal had directed WBERC to identify the distribution assets of DVC along with the corresponding costs within the T&D costs as determined by CERC. In earlier part of this judgement, we have also expressed need for segregation of assets and in fact taken resolve to set out the framework for such segregation in Part-II of our analysis. In paragraph 101 of the DVC Judgement-5, DVC’s network has inadvertently been compared to that of Bihar, Chhattisgarh and Tamil Nadu. The fact is that DVC’s network is entirely 33 kV and above (we were informed by Learned Counsel for the Appellant that they are trying to build additional system at 11 kV) whereas most state networks have significant network operating at 11 kV and 400 Volts. Thus, DVC’s network and its ratio of transmission to distribution assets, is not comparable to any state including Bihar, Chhattisgarh and Tamil Nadu. However, since this direction in paragraph 101, to apply the transmission to distribution asset ratio of the named states for the DVC system for arriving at NTI, is interim in nature, we do not intend to implement the same in the current proceedings, particularly in view of the fact that the said interim direction is without reference to, much less on an analysis. Instead, in later part of this judgement, we

have analysed the relationship between “distribution business” and “distribution system” and evolved a criterion to analyse each item of NTI and arrive at a reasoned conclusion.

91. We have noted that from this Tribunal’s previous judgements (DVC Judgements- 2, 3 and 4) it emerged that an authority which regulates the tariff for a particular segment or activity alone is competent to determine the cost and revenue elements pertaining to that segment or activity.

92. We note that in the previous judgements of this Tribunal, the term used is “distribution business” or “retail supply business”. At this stage, it is useful to distinguish between a “distribution business” and the “distribution system”.

- (i) The term “distribute” and “distribution” has not been defined in the Act. However, Section 12 mandates that no person shall inter-alia distribute electricity unless authorised by a licence under Section 14 or is exempt under Section 13.
- (ii) Some of the relevant terms, which have been defined in Section 2 of the Act and relevant part of Section 42 are extracted below:

“(17) “distribution licensee” means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

....

(19) “distribution system” means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;

.....

...

..

“Section 42. (Duties of distribution licensee and open access): (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated

and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

...

.....”

93. A careful reading of the provisions of the Act indicates that the essential objective of the distribution business (i.e. business of the distribution licensee) is the supply of electricity to consumers. The distribution system, on the other hand, constitutes the physical network through which electricity is conveyed to such consumers. Thus, distribution system is the infrastructure used by the distribution licensee (one who owns and operate distribution business) to perform the function of supplying electricity to the consumers. Accordingly, the distribution business encompasses elements beyond the fixed assets that constitutes the distribution system, including operational, commercial and service-related aspects necessary to effectuate electricity supply to the consumers.

94. In view of the analysis in the preceding paragraph, there is a need to build upon the operative part of the previous Judgments of this Tribunal that NTI from distribution business can be considered by JSERC, while remaining aligned with its core reasoning. It is clear that the tariff for distribution system is also regulated by CERC as part of integrated T&D system. The costs related to fixed assets such as plants, machinery and buildings of DVC (generation, transmission & distribution together) are considered by CERC while fixing tariff for these systems. Similarly, the cost associated with human assets i.e. manpower related cost (as part of establishment expenses during construction of fixed assets and as O&M costs during operation of fixed assets) is also considered by CERC. Since CERC has treated distribution system in a similar way as transmission, the same regulations are applicable for even systems up to 33 kV. The CERC Tariff Regulations, 2019 have one specific Regulation dealing with non-tariff income which is reproduced below:

“84. Sharing of Non-Tariff Income: The non-tariff net income in case of generating station and transmission system from rent of land or buildings, eco-tourism, sale of scrap, and advertisements shall be shared between the generating company or the transmission licensee and the beneficiaries or the long term customers, as the case may be, in the ratio of 1:1.”

95. Thus, CERC's Tariff Regulations form a complete code on tariff related matters for generation and T&D of DVC. It is clear, and rightly so, that JSERC adopts the generation tariff and T&D tariff as determined by CERC, without inquiring whether any cost element has not been considered by CERC. As a corollary, if any revenue is shown against any of individual items covered in generation and T&D tariff, it should not be used by JSERC to reduce the ARR, even if such revenue is not accounted for by CERC as NTI (Regulation 84) or not netted by CERC while formulating norms for O&M expenses. **We, therefore, conclude that NTI emanating from “distribution system” should not be considered by JSERC.**

96. Such a conclusion is necessitated by two reasons: first, to avoid duplicity of regulatory oversight; and second, because the regulatory philosophy of CERC and that of JSERC may differ on certain aspects, creating the possibility of the same head or sub-head being considered twice. If NTI emanating from distribution system is allowed to be determined by JSERC, in addition to that by CERC, it would lead to an anomalous situation; the annual fixed charges are determined by CERC by applying its own regulation, CERC also considers NTI as per its own regulations, but additionally JSERC will also determine its own version of NTI (which is only a limited aspect of tariff).

97. **However, as mentioned earlier, there may be other aspects of distribution business, which are beyond distribution system, and which may give rise to NTI. Only such NTI should be considered by JSERC in their ARR and true-up exercise.** We make it clear that the aforesaid conclusion is applicable

only till transitory arrangement of regulating tariff for distribution system by CERC continues. As and when JSERC starts regulating distribution business in its entirety, including tariff for distribution system after identifying the same, it will have complete jurisdiction over all the matter including NTI emanating from distribution system.

98. Responding to the DVC's contention that it does not claim any expenditure (including manpower) for its distribution business in Jharkhand and West Bengal, and hence NTI resulting from such assets cannot be considered by JSERC, the DVPCA has contended that capital expenditure is not a criterion for NTI. It has also relied on paragraphs 88 and 89 of the DVC Judgement-5. The relevant extract of this judgement is extracted below:

"88. The provisions dealing with NTI under the Tariff Regulations do not lay down any capital expenditure criteria, considering, the Tariff Regulations are binding and DVC was required to provide all the specific heads of income delineated in Form 1.26. DVC cannot withhold information that is required to be submitted under Form 1.26, which forms part of the Tariff Regulations.

89. We noted that in Form 1.26, income from all investments was to be shown by DVC except those made out of profit and/ or any equity issue exclusively meant for non-core business, excluding embedded generation of licensee. Despite such a clear stipulation, DVC did not furnish any details in Form 1.26 under the head of "Income from Investments and Bank Balances". Such an omission should not have been overlooked by the WBERC, as it was required to determine DVC's NTI as per the Tariff Regulations."

99. A plain reading of the above extract clearly indicated that the conclusions of this Tribunal are about submission of information. By no stretch of imagination, it can be said that this Tribunal had concluded that regulation of NTI is not related to the fact as to which Commission is regulating investment for creation of underlying asset.

100. DVPCA has contended that till date CERC has not approved any NTI for DVC's generation and T&D business and therefore the argument that

consideration of NTI will lead to double accounting is not correct. In this regard, we have already quoted Regulation of CERC dealing with NTI. The discussion earlier and our opinion emerging there from amply takes care of the contention of DVPCA.

101. Based on the conclusion drawn by us earlier, we now proceed to analyse the items of NTI considered by JSERC in ARR {items j) to y) of table 63 of Impugned Order}. The justification against most of the items of NTI for 2023 as furnished by DVC is recorded in para 5.78 and 5.79 of the Impugned Order. We have taken the description of each item as furnished by DVC to be correct since the same has not been questioned in the Impugned Order. On the other hand, JSERC, in para 5.93 of the Impugned Order has not given specific reasons for considering these items, instead they have given reasons for not considering the other items.

- (i) Certain items are related to employees. Since, costs and revenues related to all the employees of DVC are considered by CERC while determining tariff for generation and T&D, therefore JSERC should not be considering them again. Accordingly, following items should not have been considered by JSERC as NTI:
 - j): interest from Employee Loan and Advances
 - n): Income from service charges
- (ii) Certain income heads pertain to the contractors/vendors which are employed for capital works or O&M. The relevant costs and revenues get covered in capital cost or O&M cost (as the case may be) in the tariff for generation and T&D determined by CERC. Therefore, following income heads should not have been considered by JSERC:
 - k) Interest from Non-current investments
 - m) Profit on disposal of Fixed Assets

- q) LD recovery
- r) sale of scrape
- s) Sale of tenders/papers/forms
- w) Interest on short term deposits
- x) Forfeiture of SD/EMD

(iii) Certain items are linked to fixed assets. It appears that all these items are covered under CERC tariff for generation and T&D (in the form of recovery of capital cost or O&M costs or both). However, if any of the items is not covered in CERC tariff, it is equally true that the same is not covered by JSERC also (as may be seen from table 65 of the Impugned order- which does not list any item regulated by JSERC pertaining to fixed assets). Therefore, following items, which emanate from the fixed assets should not have been considered by JSERC:

- o) Misc. Recovery from Employees and outsiders (this recovery is for use of certain assets such as Schools, Hospitals, Transport Services, Quarters, Marriage Ceremony halls, Guest house etc.)
- p) Rental
- l) Interest on CLTD

(iv) The item u) and v) are intra-head and inter-head transfers. They merely indicate reallocation of costs from one-sub head to another within same head or from one head to another. Similarly, item “t) capitalizd” just represents reallocation of expenditure from revenue to capital account. There is no additional income or expenditure and therefore, these should not have been considered as NTI.

(v) About item “y) Dividend non-current Investment”, DVC has contended that this is revenue from JV of DVC with certain other companies. The

business of this JV is not the core business of DVC i.e. distribution and therefore this item should not have been considered as NTI by JSERC.

102. Based on the analysis in the preceding paragraph we conclude that none of the items from j) to y) in the table 63 of the Impugned order, which were considered by JSERC qualifies to be the NTI. In our opinion, only item i) “Delayed Payment Surcharge”, of this table qualifies as NTI.

Part-II: The Guiding Framework for segregation of network assets of DVC into distribution system and transmission system

“We believe that electricity exists, because the electric company keeps sending us bills for it, but we cannot figure out how it travels inside wires.”

- Dave Barry (the Pulitzer Prize-winning American humor columnist)

103. Though lighthearted, this sentiment captures the complexities that make electricity a challenging subject for the common person and experts alike. We, however, are dealing with a more practical consideration: clarifying the boundaries between transmission and distribution, which are the two vital pillars of power delivery.

104. From purely engineering viewpoint, a distribution system can be identified and separated from the transmission system by applying following “Four Core Considerations” as guidance:

- I. Network Topology and power flow- Distribution networks typically have power flow in a radial pattern whereas transmission networks are built with meshed loops for shared power flows across the grid.
- II. Purpose and Consumer Reach- Transmission assets primarily serve system-level bulk transfer and interconnection functions whereas distribution assets primarily serve local load-serving and service-connection functions.
- III. The Redundancy Purpose: In transmission system, redundancy is planned to preserve grid security and stability under contingencies whereas in distribution system, redundancy (rings, parallel feeders) mainly supports local reliability and service restoration.
- IV. The Voltage Level: The Transmission system generally operate at high voltages; 33 kV and above, and distribution systems generally operate at lower voltages.

105. A detailed explanation on these criteria is given below:

105.1 Network Topology and power flow- A fundamental distinction between distribution and transmission systems lies in both their topology and the resulting power flow characteristics.

(a) The conventional topology of a distribution system is “Radial”¹; Feeders originate at a distribution substation and extend outward to supply consumers. Structurally, each feeder follows a single path, with downstream sections dependent on upstream sections for supply. Because of this topology, power flow under normal conditions is unidirectional i.e. from the substation toward the loads. The physical structure largely determines the flow pattern.

In some cases, distribution systems are arranged in a ring-main configuration. Here, the feeder forms a closed loop, providing two potential supply paths to each

¹ “Distribution networks are considered as a passive termination of the transmission network with a radial structure, unidirectional power flows, and a simple and efficient protection scheme.” (Mokryani, G., “Chapter 1: Distribution Network Types and Configurations”, in *Future Distribution Networks: Planning, Operation, and Control*, AIP Publishing, 2022 - <https://pubs.aip.org/books/monograph/102/chapter/55259793/Distribution-Network-Types-and-Configurations>)- Last accessed on 13.04.2026

connection point and thereby improving reliability. However, such systems are typically operated with one normally open point in the loop. As a result, during normal operation, the network behaves as two radial feeders. The closed loop is primarily used for contingency support, not simultaneous bidirectional operation. Thus, both in structure and in normal power flow behaviour, distribution systems remain essentially radial.

(b) On the other hand, Transmission networks, are designed as meshed systems. Multiple generating stations inject power at different nodes, and substations are interconnected through several parallel transmission lines at very high voltages.

In a meshed topology, there is no single defined path between source and sink. Consequently, power does not flow along a predetermined route. Instead, it distributes itself simultaneously across all available paths in accordance with electrical laws- particularly impedance and network conditions. The topology enables this multi-path flow and enhances redundancy, flexibility, and system stability.

Importantly, this meshed character often persists even at lower transmission voltages before power is ultimately handed over to the distribution network.

(c) The introduction of solar PV and other distributed generation has added power flows into distribution networks that do not originate from the supply substation, raising the question of whether the radial character of distribution networks remains a valid description². Such distributed generation can create local reverse flows or bidirectional flows under certain conditions.

² “Until now, distribution networks are regarded as a passive termination of the transmission network, with a radial structure, unidirectional power flows, and a simple and efficient protection scheme. In presence of a large amount of distributed generation (DG), distribution networks will gradually, but ineluctably, change towards a new kind of active networks.” (Celli, G., Pilo, F., Pisano, G., et al., “Meshed vs. Radial MV Distribution Network in Presence of Large Amount of DG”, IEEE PES Power Systems Conference and Exposition, 2004 - <https://ieeexplore.ieee.org/document/1397664>) - Last accessed on 13.04.2026

However, this development does not alter the underlying topology of the distribution system. The structural arrangement remains radial. Distributed generation is superimposed onto that radial framework, modifying the direction and magnitude of power flows at certain times. If the distributed generation were disconnected for technical analysis, the system would clearly revert to radial flow from the substation to consumers.

Therefore, while actual power flows in distribution systems may now be more dynamic, the fundamental topological distinction remains i.e. distribution networks are structurally radial, whereas transmission networks are structurally meshed; and their power flow behaviour reflects that difference.

105.2 Purpose and Consumer Reach

One of the intuitive ways to distinguish a transmission asset from a distribution asset is to ask a simple question: Does this asset serve as a carrier of power, or almost as a deliverer of power³?

Transmission lines are like National Highways, distribution lines are like the city streets, colony lanes and *galis*. This distinction becomes even clearer when one looks at it through the lens of consumer visibility. In the case of a distribution asset, the consumers it serves are limited in number, typically not exceeding a few hundred, and are identifiable and directly within 'sight'. One can almost point to them; the households in a particular locality, the shops in a local market, the units in an industrial estate etc. The asset exists because of those specific consumers, and the relationship between the line and the people it serves is direct and visible.

³ "The transmission network sends the electricity produced by power plants to centers/regions of load or exchanges electricity between neighboring grids through interconnection. The distribution network receives electricity from the transmission network and distributes it to urban or rural areas, including industry, agriculture, business, residence, or other special consumers." (<https://www.sciencedirect.com/topics/engineering/electric-power-transmission-networks>) - Last Accessed on 13.04.2026

In the case of a transmission asset, the picture is entirely different. Either the consumers are so numerous and so far away that they are effectively not in “sight”, or if one were to trace the power all the way to its end use, the number of consumers being served would be so large that no meaningful identification is possible.

In essence, transmission is the backbone that moves bulk power across large distances, while distribution is the concluding link in that chain.

105.3 The Redundancy Purpose

In simple terms, the question here is: why has a backup or alternative path been built into this network; is it to maintain supply to local consumers during a fault, or is it to prevent the grid from collapsing?

One may think that this is extension of 1st point about topology and power flow, but this could be used as additional test, in case of unclear answer from 1st test. In a distribution network, redundancy is local in character. It exists so that if one feeder or line fails, an alternative path can restore supply to the affected colony or feeder area. The concern is continuity of supply to a defined group of consumers. On the other hand, redundancy in a transmission system is designed with a different and wider purpose.

105.4 The Voltage Level- The Transmission system generally operate at high voltages; 33 kV and above, and distribution systems operate at lower voltages. There is a scientific basis for this distinction. High voltages allow bulk power to be conveyed efficiently over long distances with minimal losses. As power approaches the consumer, the voltage is progressively stepped down to levels that are safe and usable for homes, businesses, and industries. In India, an asset operating at or above 33 kV is therefore generally indicative of transmission, while an asset operating below that threshold is generally indicative of distribution.

It must be noted, however, that voltage level alone is not always conclusive consideration and at best be treated as one indicator among other considerations mentioned earlier.

This is well supported by drawing inference from the CEA's technical standards namely the CEA's "Grid Standard" and "Grid Connectivity Standard". The Grid Standards define "Bulk Consumer" as one who avails supply at 33 kV and above. The Table 1 of these Standards also give maximum and minimum permissible voltage going down only to 33 kV. Similar inferences can be drawn from Grid Connectivity Standards. The CEA's Technical Standards for "Connectivity of Distributed Generation Resources" is more direct and clearly defines an "applicant" as being a generating company or a person seeking connectivity to the electricity system at voltage level below 33 kV for its distributed generation resource. Further, it defines a "distributed generation resource" as a generating station feeding electricity into the electricity system at voltage level of below 33 kV.

106. The Legal Override

It is important to clarify that the above Guiding Framework of Four Core Considerations is meant only to assist analysis. It is not a rigid test. In some cases, there may be conflict between the different considerations. Therefore, the final decision must be based on a balanced and rational assessment of all relevant facts. These technical considerations are meant for guidance and not to replace legal interpretation.

In every case, the provisions of the Electricity Act, 2003, and the law laid down by competent courts will prevail over any technical analysis. The framework must always be applied within the boundaries of the governing legal framework.

107. Implementation

The JSERC may take assistance of an independent expert or agency to identify distribution assets in the geographical boundary of the state of Jharkhand out of total DVC network, following the Guiding Framework laid down by us. One possible

option for the JSERC is to seek advice of the CEA in accordance with Section 73 (n) of the Act. JSERC can seek necessary details of the network elements from DVC, and the latter will submit the same as early as possible but not later than 45 days of such direction from the former. JSERC may seek the available cost details from the DVC and may thereafter work out cost details for cost of service-based tariff determination based on reasonable approximation from the details made available. The entire exercise of identification of distribution assets may be carried out within 6 months from receipt of this order. DVC shall submit the details of assets so identified by JSERC to CERC for necessary adjustment in the tariff already determined by the CERC. The tariff determination of such identified distribution assets may be carried out for applicability from 01.04.2027. The JSERC shall take all necessary actions as required under the Act to achieve this target.

Part-III: Segregation of accounts

108. We note from the submissions of JSERC that its contention is that separate details of distribution business/retail supply business are essential to enable it to discharge its mandate of tariff determination for such business. On the other hand, DVC has argued that in terms of Sections 33, 45 and 47 of the DVC Act, its accounts 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.

109. We agree with the contention of JSERC to the extent that determination of tariff for the retail supply business necessitates detailed segregation of DVC's

expenses and revenues attributable thereto. However, such an exercise cannot be reliably undertaken in the absence of a clear identification of the assets forming part of the distribution system. In fact, the determination of the asset base is a foundational and indispensable precondition, without which any allocation of costs and revenues to the retail supply business can at best be on rational approximation basis. As we have discussed in Part-I, it was responsibility of JSERC to identify such assets. Having set out the Guiding Framework for identifying distribution assets from integrated T&D assets in Part-II of our analysis, we are sure that this foundational difficulty will get resolved.

110. DVC has objected to JSERC's reliance on Power Regulatory Accounting Regulations 2016 ("JSERC PRA Regulations 2016") on several grounds. However, JSERC has brought to our notice Regulation 3.1 of the Tariff Regulations, 2020. This Regulation is reproduced below:

"A 3. Definitions and Interpretation

3.1 In these Regulations, unless the context otherwise requires-

1. 'Accounting Statement' means for each Financial Year:

- i. The Balance Sheet, prepared in accordance with the form contained in the Companies Act, 2013 and its predecessors, as applicable;*
- ii. Cash Flow Statement, prepared in accordance with the applicable Accounting Standards of the Institute of Chartered Accountants of India;*
- iii. Cost Accounting Records prescribed by the Central Government under Section 148 of the Companies Act, 2013 and its predecessors, as applicable;*
- iv. Notes on accounts thereto, and such other supporting statements and information forming part of financial statements or as the Commission may direct from time to time;*
- v. Profit and Loss Account, complying with the requirements contained in The Companies Act, 2013 and its predecessors, as applicable;*
- vi. Report of the Statutory Auditors, including any annexure and appendix thereto, as applicable;*

vii. Any or all the formats as notified by the Commission under these Regulations for Tariff Regulation including Multi Year Tariff Regulations pertinent to the relevant year;

viii. Reconciliation Statement, duly certified by the Statutory Auditors, showing the reconciliation between the total expenses, revenue, assets and liabilities, of the entity as a Company and the expenses, revenue, assets and liabilities, separately for each Business regulated by the Commission and unregulated business operations.”

111. We are satisfied with the explanation given by JSERC that the above extracted Regulation on standalone basis captures need for segregation of accounts. Therefore, for the present proceedings we are not going into applicability or otherwise of JSERC PRA Regulations 2016 on DVC.

112. DVC has relied on DVC Judgement-1 to contend that the Regulations framed by JSERC under the Act cannot curtail provisions of the DVC Act regarding finance, accounting and audit; such Regulations should not only be in conformity with the Act but also with DVC Act since it has not been repealed; provisions of the DVC Act which are not inconsistent with the Act continue to apply; Regulations are to be read in accordance with the provisions of the Part IV of the DVC Act; and while framing Regulations under Section 61 of the Act subject to Section 14 (4th proviso), the Commissions cannot ignore provisions of the DVC Act. Essentially, the aforesaid contentions of DVC are premised on the understanding that the segregation of accounts emanates from the Regulations of JSERC alone. In our view, this understanding is not correct. As pointed out by JSERC in its submission, this requirement essentially flows from the Section 62(2) of the Act itself, which is extracted below:

“(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.”

113. JSERC has contended that the Section 45 of the DVC Act does not prohibit

segregation of accounts, as appears to have been submitted by DVC. For the purpose of analysis, it is worthwhile to extract Section 45 and 47 of the DVC Act:

“45. Annual report.—(1) The Corporation shall prepare, in such form as may be prescribed, an annual report within six months after the end of each financial year giving a true and faithful account of its activities during the previous financial year, with particular reference to—

- (i) irrigation;*
- (ii) water supply;*
- (iii) electrical energy;*
- (iv) flood control;*
- (v) navigation;*
- (vi) afforestation;*
- (vii) soil erosion;*
- (viii) use of lands;*
- (ix) resettlement of displaced population;*
- (x) sanitation and public health measures; and*
- (xi) economic and social welfare of the people*

(2) The annual report shall also give a true and faithful account of the income and expenditure during the previous financial year, the net amounts attributable to each of the three main objects and the distribution of the capital cost between the three participating Governments and show the progressive totals from the inception of the Corporation and the up-to-date financial results.

(3) The payments provisionally made by each of the three participating Governments on the basis of the budget estimates shall be adjusted as soon as possible in accordance with the allocation made in the annual report.

(4) Printed copies of the annual report shall be made available to each of the three participating Governments by the 15th day of October each year.

(5) The annual report shall be laid before Parliament and the State Legislatures concerned as soon as may be after it is prepared.”

....

.....

47. Accounts and audit.—The accounts of the Corporation shall be maintained and audited in such manner as may, in consultation with the Auditor-General of India, be prescribed.”

114. We agree with the submission of JSERC that just because Section 45 of the DVC Act only mentions broad activity of “electrical energy”, this does not mean

that it prohibits its further separation into generation, transmission and distribution. Accounts are ordinarily prepared by identifying expenses and revenues at a detailed level and thereafter aggregating them under broader heads. In this process, expenses that are exclusively attributable to a particular segment, such as distribution, can be directly assigned to that segment. Where an expense relates to more than one segment, for instance common operation and maintenance activities covering both transmission and distribution elements, the same can be apportioned based on a reasonable and consistently applied method. It therefore follows that, with some additional effort, expenses and revenues can be classified under separate heads of generation, transmission and distribution, while continuing to reconcile with the overall figures reflected under “electrical energy.” Segregation of accounts thus entails maintaining a greater degree of granularity, without in any manner affecting the integrity of the overall accounts, and in fact serves to enhance transparency and regulatory clarity.

115. Similarly, in our opinion Section 47 of the DVC Act does not come in the way of segregation of accounts. We see no reason as to why the Comptroller and Auditor General of India (“CAG”) cannot prescribe the manner of maintaining and auditing of accounts of DVC so as to meet the requirement of DVC Act as well as the provisions of the Act and the Regulations made thereunder.

116. DVC has also relied on paragraph 52 and 55 of the Hon’ble Supreme Court’s judgement in ***Bhaskar Shrachi Alloys Ltd v DVC, (2018) 8 SCC 281*** to contend that non-conflicting provisions of DVC Act shall continue to apply and Part IV of the 1948 Act not being inconsistent with the provisions of the 2003 Act can, therefore be taken into account for determination of tariff. The relevant paragraphs of the aforesaid judgment are extracted below:

“52. The provisions of Section 58 of the 1948 Act which is in the following terms were also placed before the Parliamentary Standing Committee while seeking exemption from the operation of the proposed 2003 Act:

“58. Effect of other laws.—The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.”

53. On the other hand, it would appear from the record of the proceedings of the Parliamentary Standing Committee that the industry represented by Chhotanagpur Chamber of Commerce & Industry and the Bengal Chamber of Commerce & Industry as well as the States of Jharkhand and West Bengal had contested the claims made by the Corporation for exemption and had pleaded before the Parliamentary Standing Committee that the 1948 Act itself be repealed/amended insofar as all non-power related activities are concerned which constitute only about 10% of the total activities of the Corporation.

54. After considering the respective stands taken, the Parliamentary Standing Committee had recommended that the Corporation should be exempted from the operation of the provisions of the proposed 2003 Act in view of the special status and responsibilities of the Corporation as envisaged under the Parliamentary enactment constituting it (i.e. the 1948 Act). However, it appears that Parliament was not inclined to provide a blanket/total exemption in favour of the Corporation and the 2003 Act did not include the Corporation as one of the entities in Section 173 of the 2003 Act which provides exemption insofar as the provisions of the Consumer Protection Act, 1986, the Atomic Energy Act, 1962 and the Railways Act, 1989 clearly excluding the provisions of the 2003 Act therefrom. Instead, the fourth proviso to Section 14 of the 2003 Act was specifically incorporated, details of which have already been noted.

55. Having regard to the legislative history behind the enactment of the provisions of Section 173 and the provisions of Section 14 including the fourth proviso thereto, it may be more in consonance with the Parliamentary intention to hold that the fourth proviso to Section 14 need not be understood to be confined only to the question of licensing which is dealt with by the main part of Section 14. Rather, we are inclined to hold that Parliament had intended to provide partial exemption to the Corporation by mandating that such provisions of the 1948 Act which are not inconsistent with the 2003 Act will continue to hold the field. Viewed thus, the fourth proviso to Section 14 of the Electricity Act, 2003 has to be understood to be a

legislative exercise in the nature of a substantial provision of law. Part IV of the 1948 Act not being inconsistent with the provisions of the 2003 Act can, therefore, be taken into account for determination of tariff. Such provisions of the 1948 Act will also have an overriding effect over the inconsistent provisions of the Tariff Regulations. Our view, as above, will also effectuate the provisions of the 1948 Act insofar as the activities of the Corporation, other than generation and transmission of electricity, is concerned. We, therefore, affirm the above view taken by the Appellate Tribunal for the reasons aforesaid.”

117. As we have observed earlier, we see no conflict with the provisions of the DVC Act if the accounts under overall activity of “electrical energy” are put into three sub-categories of generation, transmission and distribution. Such accounting will not in any way contradict with aforesaid judgment of Hon’ble Supreme Court.

118. DVC has also cited this Tribunal’s judgment dated 29.10.2018 in Appeal No. 206 of 2015. The relevant part of this judgment is extracted below:

“10. Issue No.4:-

Separate Accounts

10.1 Learned counsel for the Appellant contended that DVC, being a statutory body with multifarious functions including (i) power generation, transmission and distribution (ii) flood control and (iii) irrigation & others should maintain separate accounts for each of its business undertakings for proper assessment of cost of power supply in a reasonable manner. He further highlighted that Sections 41 and 51 of the Electricity Act, 2003 mandate DVC to maintain separate accounts for each of its business undertakings but the State Commission has been determining its tariff without directing DVC to maintain separate accounts for distribution activity.

10.2 Per contra, learned counsel for the State Commission indicated that while determining generation tariff, the Central Commission takes note of different activities of DVC and considers the proportionate cost relating to the electricity. Further, truing up of such generation & transmission tariff is also done by the Central Commission. As far as the State Regulatory Commission is concerned, it has not taken into account the independent components besides the generation tariff. He further submitted that in fact, in distribution part, this question hardly arises since additionally, it only involves Power Purchase Cost, Interest on Security Deposit payable to the consumers, Interest on Working Capital and statutory fees etc.

10.3 The learned counsel for Respondent No.2 (DVC) contended that DVC is a vertically integrated utility and all the physical assets are entirely either generation or transmission assets. To advance his arguments he cited the order dated 03.10.2006 of the Central Commission and the judgment dated 23.11.2007 passed by this

Tribunal wherein these aspects have been duly considered and it has been held that there are no identifiable distribution assets other than the common assets.

Our findings & analysis:-

10.4 After due critical evaluation of the submissions of the learned counsel appearing for both the parties, we are of the considered view that as far as determination of retail tariff is concerned, there is no distinctive distribution assets with DVC as also held by the cited order of the Central Commission and judgment of this Tribunal. By and large, all the physical assets of DVC are entirely either generation or transmission asset which are taken into account by the Central Commission while deciding the input cost for determination of retail tariff. Hence, we do not observe any ambiguity in the order of the State Commission relating to the retail tariff.”

119. It may be observed that the judgement in question is predicated on the assumption that CERC is determining tariffs for only generation and transmission. Furthermore, WBERC did not perceive any necessity for the separation of accounts (in current proceedings also DVC has submitted that in none of the previous tariff proceedings, JSERC has ever sought for segregation of the annual accounts of DVC). In contrast, it is a fact that for reasons mentioned earlier in this order, presently CERC determines tariffs for all physical assets of DVC's, including generation and an integrated network comprising transmission and distribution. If all assets are regulated by a single authority, unified account of “electrical energy” may provide enough visibility over all expenses and revenues. Moreover, since tariff for the transmission and distribution networks is fixed in accordance with principles applicable to transmission, inter-se separation of account between transmission and distribution may not be essential at present. As previously noted, the multiple issues emanating from earlier cases relating to NTI, and the imperative to adhere to the scheme envisioned under the Act, necessitate the distribution business to be fully regulated by the State Commissions. With separate regulators for distribution, segregating accounts becomes indispensable. This consideration was perhaps not significant at the time of the aforementioned judgement. Based on the foregoing analysis, we conclude that the findings of this Tribunal in the aforementioned judgement are not binding precedent for us.

120. DVC has also contended that provisions of the Act requiring separate

accounts for “other business” do not apply to DVC. To support their contention, DVC has relied on paragraph 62 and 63 of the Hon’ble Supreme Court’s judgement in ***Bhaskar Shrachi Alloys Ltd v DVC, (2018) 8 SCC 281***. The relevant extract of the aforesaid judgement is extracted below:

“62. Insofar as the issue of allowance of cost relating to other activities of the Corporation to be recovered through tariff on electricity is concerned, we have taken note of the objection(s) raised in this regard which in sum and substance is that Sections 32 and 33 of the 1948 Act are in direct conflict with Sections 41 and 51 of the 2003 Act and, therefore, recovery of cost incurred in “other works” undertaken by the Corporation through power tariff is wholly untenable. Apart from reiterating the basis on which we have thought it proper to affirm the findings of the learned Appellate Tribunal on the purport and scope of the fourth proviso to Section 14 of the 2003 Act and the continued operation of the provisions of the 1948 Act which are not inconsistent with the provisions of the 2003 Act, we have also taken note of the specific provisions contained in Sections 41 and 51 of the 2003 Act which, inter alia, require maintenance of separate accounts of the other business undertaken by transmission/distribution licensees so as to ensure that the returns from the transmission/distribution business of electricity do not subsidise any other such business. Not only Sections 41 and 51 of the 2003 Act contemplate prior approval of the Appropriate Commission before a licensee can engage in any other business other than that of a licensee under the 2003 Act, what is contemplated by the aforesaid provisions of the 2003 Act is some return or earning of revenue from such business.

63. In the instant case, the “other activities” of the Corporation are not optional as contemplated under Sections 41/51 of the 2003 Act but are mandatorily cast by the statute i.e. the 1948 Act which, being in the nature of socially beneficial measures, per se, do not entail earning of any revenue so as to require maintenance of separate accounts. The allowance of recovery of cost incurred in connection with “other activities” of the Corporation from the common fund generated by tariff chargeable from the consumers/customers of electricity as contemplated by the provisions of the 1948 Act, therefore, do not collide or is, in any manner, inconsistent with the provisions of the 2003 Act. We will, therefore, have no occasion to interfere with the findings recorded by the learned Appellate Tribunal on the above score.”

121. In our opinion, the contention of DVC is based on incorrect interpretation of the aforesaid judgment. The extracted paragraphs clearly refer to Section 45 of

the DVC Act, which we had reproduced earlier. This section lists out eleven activities of DVC to be reported in the annual report; one of the activities being “electrical energy”. The “other activities” mentioned in the aforesaid judgement are other 10 activities excluding “electrical energy”. What Hon’ble Supreme Court has held is that these other activities being in the nature of socially beneficial measures, per se do not entail earnings of revenue. Clearly the term “other activities” elaborated in the aforesaid judgement is not the same as the “other business” mentioned in the Section 51 of the Act. This section is reproduced below:

“Section 51. (Other businesses of distribution licensees):

A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilisation of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilised for reducing its charges for wheeling:

Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidises in any way such business undertaking nor encumbers its distribution assets in any way to support such business.

Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of distribution of electricity.”

122. A plain reading of the aforesaid extract indicates that the provisions of Section 51 are attracted only where assets forming part of the distribution system are utilised for purposes other than the distribution function. By way of illustration, infrastructure such as overhead poles used for distribution lines may also be deployed for ancillary uses, such as supporting optical fibre networks. During the course of the hearing, learned counsel for DVC submitted that it has neither sought approval for, nor is it presently engaged in, any such additional business using its assets. If that be so, the provisions of Section 51 are not presently attracted. However, in the event DVC undertakes any such use of its distribution assets for other business in future, the provisions relating to sharing of revenues under the said Section shall apply.

ORDER

For the foregoing reasons as stated above, 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.

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

PRONOUNCED IN THE OPEN COURT ON THIS 24th DAY OF APRIL, 2026.

(Ajay Talegaonkar)
Technical Member

(Virender Bhat)
Judicial Member

REPORTABLE / NON-REPORTABLE

kns/mkj/kks