

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND-RANCHI
(4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi – 834001)

Present- Prem Prakash Pandey
Electricity Ombudsman

Case No. EOJ/07/2017

Ranchi, dated 4th day of, December 2017

M/S-KOHINOOR STEEL PRIVATE LIMITED, having its office at 326, Ashiana trade Centre, Adityapur, Jamshedpur, through its authorized signatory shri Pravir Ghose s/o Late Jaydev Ghose, r/o-16A, Everest House, 46C, J.L. Nehru Road, P.O. middleton Row & P.S.Shakespeare Sarani, District-Kolkata (W.B.)

Appellant

Versus

The Jharkhand Urja Vikas Nigam Limited through its Chairman, having its office at Engineers, HEC,P.O. & P.S. Dhurwa, District Ranchi & others.

Respondents

AND

Case No.EOJ-08/2017

The Jharkhand Urja Vikas Nigam Limited through its Law Officer namely Mithilesh Kumar, S/o- Sri. R. B. Choudhary, R/o- Kusai Colony, P.O. & P.S.- Doranda, District Ranchi

...Appellant

Versus

M/S Kohinoor Steel Pvt. Ltd. through its authorized signatory Shri Anindya Sengupta s/o Lare Achintya Srngupta, r/o LKG 2 , K/5, Harmu Housing Colony, P.O. Harmu, P.S. Argora, District- Ranchi, Jharkhand.

Respondent

For the Respondent/Appellant : Sri. Rahul Kumar (Standing Counsel)
: Sri. Prabhat Singh (Additional Counsel)

For the Appellant/ Respondent : Sri.N.K.Pasari & Raj kumar Gupta dvocate
*(Aforesaid both appeal are arising out of impugned Judgement an d
order dated 30-06-2017, passed ,in complaint case no. 01 of 2015, by the
Learned V.U.S.N.F., Chaibasa at Jamshedpur)*

J U D G E M E N T

1- The instant both appeal have been directed against the impugned judgment and order dated 30-06-2017, passed by the Learned Vidyut Upbhokta Shikayat Niwaran Forum (here in after called VUSNF), Chaibasa at Jamshedpur, in complaint case no. 01 of 2015 , whereby and where under, the learned forum partly allowed the compliant petition of the M/S KOHINOOR steel Pvt. Ltd. and quashed energy bill for the month of January 2015 with direction to the Jharkhand Urja Vikas Nigam Ltd.(here in after called JUVNL) to issue fresh bill on the basis of Monthly Minimum charge and also directed to revise and raise the bill from 01-02-2015 to 24-02-2015 on the basis of Monthly Minimum charge and further for the rest period of February 2015, on the basis of average consumption. It is further ordered that Kohinoor steel pvt. Ltd is liable to get rebates from the month of June 2015 on wards, as per rule.

2- It is relevant to mention at very out set that instant case was instituted by the M/S Kohinoor Steel Pvt. Ltd. against JUVNL, before the learned VUSNF Chaibasa at Jamshedpur, for the following reliefs:-

(a)- For quashing the energy bill raised for the month of November & December 2014, on the basis of Clause- 11.3, 3rd proviso of the supply code regulations without adhering to clause- 3(c) of the agreement entered into.

(b)- For a direction upon the respondents to revise the bills for the month of November & December 2014, taking into consideration the working condition of the petitioner as also to allow rebates in terms thereof, without leaving any delayed payment surcharge thereupon

Since both appeal have been filed against impugned judgment and order, hence, after hearing the learned counsels of both side , is hereby decided by this common judgment.

3- Factual Matrix of the petitioner namely **M/s Kohinoor steel Pvt, Ltd,** Appellant- cum- respondent, as per its appeal, case in brief; that it is a company, incorporated under the provision of Company Act, 1956 and its unit is situated at village Bulandih, Chandil and for the purpose of running the same , has taken electrical connection from the Jharkhand State Electricity Board, now known as JUVNL, for a contract demand of 1500 KVA. The connection was energized in the month of June 2006 and accordingly, an agreement was executed on 14-12-2005. The JUVNL had agreed to supply the power at 33 KV but JUVNL failed to supply the power at 33 KV. The further case is that due to expansion of unit by installing Rolling Mill, the Kohinoor steel Pvt. Ltd. applied for enhancement of load of 2500 KVA, which was sanctioned and the petitioner contract demand came to 4000 KVA and accordingly, an agreement was executed in the month of January,2009 and had to pay a minimum of Rs. 10,00,000/ towards energy charges being 4000 KVA x Rs. 250/

4- The further case is that on- 05-12-2014, meter reader came to take meter reading in its premises then it has brought to the knowledge that meter is defective. Immediately, a request was made for

replacement of meter but JUVNL had not replaced the meter and prepared energy bill for the month of November and December 2014 on the basis of average consumptions, as per Clause 11.3 of the Supply Code Regulation 2005, without taking into the consideration of Clause 3(c) of the H.T. agreement and also without taking into consideration of the working condition of the Company. It is alleged that the said unit was not functioning properly since October 2014 for various reasons, which was beyond the control of the petitioner and the same was duly communicated to the JUVNL, which may be substantiated from the meter reader report also, but representation of the petitioner was never opposed/ no rebuttal to that effect was ever made by the JUVNL in as much as the said representation was given only after having discussions with the officers of the JUVNL. It is further alleged that the procedure adopted by the JUVNL was not at all in consonance with any of the prescribed procedure.

(A)- Three months average consumption, prior to meter getting defective, not applicable.

(B)- Minimum Monthly guarantee Charges, if the said charges are higher than the actual recording, board rightly applied.

(C)- Taking in to consideration, the working condition in terms of Clause 3(c) of the agreement, ought to have applied.

Lastly, a notice u/s 56 of Electricity Act 2003, for payment of dues of Rs.67,89,499/ vide letter no.33, dated 03-01-2015, for the month of November,2014 was served with request to make payment within 15 days of the issue of the letter, failing which, power supply may be disconnected. The representation of the petitioner was not heard.

Thereupon this case was instituted on 31-01-2015 before the learned VUSNF.

5- It is relevant to mention at this stage that on 20-02-2016, an I.A. petition was filed by the petitioner, in this case, before the learned VUSNF, on the ground that much developments have occurred and added that the petitioner was served energy bill for the month of January and February 2015, which were prepared on the basis of Clause 11.3 of the Supply Code Regulation, without taking in to consideration of working condition of the unit and also clause 3 (c) of the H.T. agreement. The petitioner has been burdened with an additional amount of Rs.40 lacs, which has also been challenged here.

6- The further case is that since electrical connection had been discontinued, the petitioner approached to the JUVNL for grant of installments of the outstanding liabilities and disputed amount, which was allowed vide letter no. dated 25-02-2015 and petitioner has deposited the first installment. It is further alleged that the procedure adopted by the licensee was not at all in consonance to any of the prescribed procedure. The further case is that on 16-04-2015, a new meter was installed by the JUVNL in the unit and for the month of April 2015, again the energy charges were levied on the basis of average consumption from 01-04-2015 to 15-04-2015 and for the rest period, on the basis of meter reading. It is also alleged that after receiving the energy bill of April 2015, the petitioner has challenged, vide letter dated 27-05-2015, which was referred to the Superintendent Engineer Chaibasa by the M.D. of the Electricity Company but on the same day a disconnection notice was issued against the petitioner, which was received by the petitioner on 11-06-2015, resultantly, a representative of the petitioner again approached to the Managing Director and expressed its difficulties and produced

documents with respect to lock- out of the Factory. It is further alleged that an oral instruction as given that the petitioner should deposit a sum of Rs. 10 lakh and only till the Hon'ble court re-opens and any order is passed on the writ petition , no coercive step shall be taken against the petitioner. Accordingly, Rs. 10 lakh was deposited. However, on 16-06-2015, the petitioner received a telephonic call to deposit the balance amount, failing which, electric connection shall be disconnected. It is also alleged that JVUNL has inserted Rs.14,44,117/ on account of short unit charged in March 2015, which was also unjustified. The rebates have not been granted in the energy bill of the June 2015, although the amount was stayed.

7- The further case of the petitioner is that one W.P.(c) No.1180/2015 was filed by the petitioner before the Hon'ble High Court, as because the learned VUSNF was not functional properly at that very time .The Hon'ble High Court, after hearing the both sides, passed an order and licensee was restrained from carrying out any disconnection with direction to the petitioner to deposit, to make payment, of Rs. 10 lac as adhoc payment , which shall be subject to final adjustment .

8- The JUVNL appeared before the learned VUSNF and filed its counter affidavit, denied the allegation leveled against it and has taken a plea that energy bill from November 2014 to 15-04-2015 were raised on the basis of 12 months average consumption ,as per the then prevailing clause 11.3.1 of the Electric Supply Code Regulation 2005. The meter was replaced on 16-04-2015 and then energy bill from 16-04-2015 on wards were raised on the basis of actual energy consumption. The petitioner is not eligible for rebate as because there lies arrear of bills. The statement of the petitioner that its unit was not functioning properly since October 2014, has got no relevancy at all with respect to

the electricity Rules. Moreover, the petitioner did not pay the energy bill for two consecutive months, hence disconnection notice was issued. Thus, the petitioner made request for installment of the outstanding dues, which was granted but the petitioner only paid two installments and thereafter stopped payment. Actually, the petitioner has committed breach of agreement. As matter of fact, the petitioner was served genuine electricity bill and disconnection notice, while the petitioner failed to pay the energy bill in the month of May 2015. The further case of the JUVNL is that the Hon'ble High Court has never stayed the realization of raised bills. Therefore, under the facts and circumstances of the case, the petitioner does not deserve for any rebate and relief, as claimed, hence complaint petition filed by the petitioner is liable to be dismissed with cost.

9- The learned VUSNF, after perusal of the whole material available on the record & after hearing to the learned counsels of both sides, partly allowed the complaint petition of the petitioner, namely- M/S KOHINOOR STEEL PRIVATE LIMITED, but at the same time, it is further held that the energy bill for the month of November & December 2014 and March & April 2015 are rightly issued by the JUVNL, whereas, the energy bill for the month of January 2015 has been quashed with direction to the JUVNL to issue fresh bill on the basis of Monthly Minimum Charge and also revise and raise the bill from 01-02-2015 to 24-02-2015 (for the month of February) on the basis of monthly minimum charge and for the rest period of February, 2015, on the basis of average consumption and M/S KOHINOOR STEEL PRIVATE LIMITED is also liable to get rebates from the month of June 2015 onwards, as per Rule.

10- Assailing the impugned judgment and order passed by the learned VUSNF, the first appeal No.EOJ-07/2017 is being filed by the M/S Kohinoor Steel Private Limited. On the other hand , assailing the impugned judgment and order, the JUVNL has also filed an appeal No.EOJ-08/2017. In both appeal , both respondents filed their cross objections.

11- The learned counsel appearing on behalf of M/S Kohinoor Steel Private limited, as Appellant, has contended that the learned VUSNF erred in law and in fact, passed the order complained of an error of law apparent on the face of the record and in erroneous exercise of discretion vested in forum and also without due consideration of the principle of natural justice. The learned VUSNF has also failed to appreciate that when meter was dismantled, a report was prepared to that effect and in the report , it had clearly mentioned that a check meter was also installed from the out side of the factory premises, which was, at time, utilized to match the consumption recorded in the energy meter, installed inside the consumer's premises and the purpose of the check meter was to keep a check of actual consumption recorded and the same could have been easily utilized for the purpose of raising monthly bills and additional liability and as such averaging is completely illegal. The learned VUSNF has also failed to appreciate that as per clause 13.2.3 of the Supply code Regulation, the consumer shall be entitled to purchase the meter as per specification provided by the licensee and after completion of the modalities, the same shall be installed, which was not allowed in the instant case , for the reasons best known to the licensee , like wise, as per clause 13.3 of the Supply code Regulation, if the meter is found to be burnt, lost and inoperative, the same has to be necessarily replaced with new meter and the electric supply has to be restored and

distribution licensee may recover the price of the new meter from the consumer and as per clause 13.4 of the Supply code Regulation, if the display parameter were not functional, the meter could have been easily sent for testing and maintenance of meter, in the event of any doubt about the accuracy. Since the modalities having not been completed by the licensee, the appellant could not be fastened with the additional liability that too for non performance of an obligation of the licensee. It has further been contended that although, the appellant on its own motion offered to purchase a new meter, which was never accorded too by licensee for the reasons best known to them and in such eventually, the appellant could not have been burdened heavily. Apart from that the learned VUSNF has also failed to appreciate that clause 11.3 of the supply Code Regulation can not be read in isolation, it has to be necessarily read with Proviso attached with it and the IInd proviso to clause 11.3.1 of the supply code regulation, which clearly provides that a maximum of three months is allowable to be billed on average consumption and not beyond that.

12- The learned counsel for the Kohinoor steel private Limited has further submitted that in the instant case , there was no occasion or reason for the licensee to even bill the appellant beyond December , 2014 on the basis of 12 months energy consumption that too knowing it well that the latches, lapses and negligence are on the part of the licensee and its officers. Moreover, undisputedly, with effect from 17th December, 2014, there was complete lock out and there was complete labour unrest and there was no production activity and in terms of clause 3 (c) of the High Tension Agreement, otherwise also the remission has to be granted. It has further been contended that the learned VUSNF has also failed to appreciate that clause 3 (c) of the High Tension Agreement has not

been deleted and the same is still exists, being not in conflict with any of the Tariff Condition and then it was incumbent upon the licensee to look in to the working condition of the Factory, which , in the instant case, has not been looked into. Therefore, the learned VUSNF has misled, misread and misinterpreted the provision of clause 3 (C) of the H.T. agreement and without any reasonable basis far less any plausible explanation, struck down the submissions of the appellant. The learned VUSNF has also failed to appreciate that Appellant had brought on the record, the central Excise Return, which is applicable to a manufacturing concern declaring its actual manufacture, corroborating the evidence of the manufacture and release of manufactured products read with certificate issued by the Chartered Accountant concerning the consumption of electricity by the appellant from the licensee vis-à-vis its own power plant. Moreover, there was a most evasive reply on this count, which has not been discussed by the learned VUSNF, while adjudicating the case in hand rather simply mesmerized by clause 11.3 of the supply Code Regulation and has not dealt with any of the argument advanced by the appellant even not dealing with the situation as to when the appellant had offered to purchase a new meter, why JVUNL had not allowed to do so?.

13- Refuting the contention advanced on behalf of M/S Kohinoor Steel Private Limited, it has been submitted by the learned additional standing counsel for the JUVNL that M/S Kohinoor Steel Private Limited is trying to distract the matter by stating false statement and deliberately disputed the matter and avoid payment of energy bills ,which were served as per norm's of JSERC Regulation. Moreover JUVNL has always supplied power at desired with the tolerance of permissible voltage regulation but Kohinoor steel private Limited many times failed to make payment of energy bills within stipulated due date. It

has further been contended that during course of regular meter reading dated 05-12-2014, it was found that meter installed was defective, thereafter the bills were raised as per the applicable tariff and Regulation of JSERC. Meter and meter unit is important and only instrument for measurement of consumption of electrical energy, therefore, due to sensitivity of metering point, procurement of metering unit could not be allowed to the said company. However , when it was brought to the notice about defective meter from November 2014 on 5th day of December ,2014, energy bills were generated till replacement of meter and served, on the basis of the provision of clause 11.3 of the Supply Code Regulation, which has got binding force and overriding effect over the concerned clause 3 (c) of the agreement.

14- The learned additional standing counsel has further submitted that Clause 11.3 of the Supply Code Regulation very much provides that in case of a meter of a consumer gets defective, not working, the billing has to be made on the basis of the average of previous 12 (twelve) months. The reason for taking average of 12 months gives protection to the both – Licensee as well as consumers, because the same very much cover fluctuations of working in a unit in the entire year. Thus, the claim of the M/S Kohinoor steel private limited is totally unjustified & is not in tune to the applicable tariff and against the provision of Supply Code Regulation. As matter of fact, M/S Kohinoor Steel Private Limited was well aware about genuineness and correctness of served energy bills, so due to non-payment of energy bills, disconnection notice was served u/s 56 of Electricity Act. The Hon'ble Jharkhand High Court , on 01-07-2015 was pleased to direct to the M/S Kohinoor Steel Private Limited to make the ad-hoc payment of Rs. 10.00 Lacs and also they would continue to make payment of future monthly

bills but they failed to make monthly payment of energy bills. Therefore, under the facts and circumstances, as submitted above, the instant appeal is fit to be dismissed with cost.

15- At this juncture, I would like to place the arguments of both sides, advanced in EOJ- appeal no,08/2017. Admittedly, this appeal has been preferred by the JUVNL. Assailing the impugned judgment and order, it has been submitted by the learned additional standing counsel for the JUVNL that Learned VUSNF has committed error in not appreciating relevant clause 11.3 and 11.4 of Supply code Regulation, 2005 and quashed the energy bill raised for the month of January, 2015 while considering working condition of Factory, specially, when it is held in its impugned judgement and order that provision made under Supply Code Regulation, 2005 shall prevail over the terms of agreement executed between the parties. The learned VUSNF has further committed an error in considering clause 3 (c) of the agreement and while considering so, it has not stated the reason behind coming on conclusion that the Factory was closed in the month of January, 2015 and has also wrongly considered representation of the M/S Kohinoor Steel Private Limited for providing new electric meter rather learned VUSNF ought to have considered that meter are provided by a licensee, when consumers refused to provide meter and that no one had prevented to M/S Kohinoor steel private limited from providing new meter for replacement of defective meter and also ought to have considered that the order passed by the Hon'ble Jharkhand High Court was with respect to disconnection of electricity and it had no nexus with providing rebate. Lastly, it has been submitted that Learned VUSNF has failed to consider that no rebate could be provided in cases, where there is any arrears, Thus, the Learned VUSNF has quashed energy bill for the month of January, 2015, in most

mechanical manner and without appreciating correct preposition of Law and Regulation and has directed to the JVUNL to allow rebate in energy bills from the month of June, 015 onwards. Therefore, under the facts and circumstances of the case, as submitted above , the aforesaid impugned finding and order f the learned VUSNF is fit to be set aside.

16- The learned counsel appearing on behalf of M/S Kohinoor Steel Private Limited (Respondent) has first of all submitted that JVUNL being licensee could not blow hot and cold at the same time , in as much as the order passed by the Hon'ble High Court, dated 01-07-2015 in two parts:-

(a)- To make ad-hoc payment of Rs. 10.00 lacs, which would be subject to final adjustment.

(b)- If, such payment is made, no electric disconnection to be effected, meaning thereby, that any outstanding amount on the date of passing of interim order, the sole respondent was directed to deposit only 10.00 lacs and the balance amount was stayed,

And, if the interpretation sought to be given to the order of the Hon'ble High Court, is accepted, the same would be absolute nullity in as much as in the tariff itself., It has been provided that if any amount has been stayed then the Licensee would continue to grant rebates. It has further been contended that while granting ad-interim protection, by directing the licensee not to disconnect was with a view to stay the demand as also the recovery of the disputed amount by coercive method was stayed, meaning thereby that the amount in dispute was also stayed. The learned counsel further submitted that interpretation given in clause 13.2.1 of The Supply Code Regulation is absolutely otherwise in as much as , it is categorically written that the distribution Licensee shall supply the meter and accessories, unless of course, the consumer elects to purchase the

meter. In case in hand , undisputedly vide numerous letters commencing from the day, the meter become non-functional, the same was informed and the licensee, at this belated stage, is saying that the consumer could have installed its own meter, such bald statement could have been given at the relevant point of time only and not at this stage.

17- The learned counsel has further submitted that assailing the grounds of appeal, the only ground , which has been taken assailing the impugned order to the extent , it had partly granted the relief to its sole respondent is that not providing new meter was beyond the control of the licensee and as such the bills were rightly raised, however, for the period of factory was closed, no reason has been assigned by the learned VUSNF, while quashing the energy bills for the month, when the unit was closed. It has further been contended that on mere perusal of the impugned order, it would transpire that the learned VUSNF had considered the fact that because of disconnection of electricity, the sole respondent could not avail the electricity and for that period, bill has been quashed and so for the grant of rebates are concerned, those are in the conformity with the orders of the Hon'ble High Court. Moreover, if the Licensee had any objection to the orders of the Hon'ble High Court, it is beyond jurisdiction of either the VUSNF or this Forum to modify the orders of the Hon'ble High Court and as such this appeal is absolutely misconceived and is liable to be dismissed with cost.

18- It will admit of no doubt that both sides , being aggrieved and dis satisfied from the impugned order, preferred appeal and cross appeal. Admittedly, Kohinoor steel Pvt, Ltd. is consumer of JUVNL since 2005 and electrical connection for contract demand of 1500 KVA was given on 12-05-2006(annexure 1 of the appeal no. EOJ/08.2017, billing month Nov 2014,Dec'2014), which was enhanced to 4000 KVA in

January 2009 and accordingly, an` energy bill was being issued regularly on the basis of consumption recorded in meter, installed in its premises. It is also admitted fact that at the time of installation of regular main meter inside the premises of the M/S Kohinoor Steel Pvt. Limited, one check meter was also installed from out side of that very premises with view to take correct reading of electric energy for the purposes of billing and also to protect theft of electrical energy. This fact of the matter is not in dispute that on 05-12-2014 an official meter reader of JUVNL came in the premises of Kohinoor Steel Pvt. Limited to take meter reading for billing and it was learnt that meter was defective and accordingly a report was prepared dully signed by personal manager of Kohinoor Steel Pvt. Limited and three officials of JVUNL(annexure 3 of memo of appeal in EOJ 7/2017) and thereupon the Kohinoor Steel Pvt. Limited made request for replacement of the said defective meter but at that time, same was not replaced rather on the other hand JVUNL prepared energy bill for the month of November and December 2014 on the basis of average consumption as per clause 11.3 of the Supply code Regulation. It is submitted on behalf JUVNL that meter was not available in the central stores and this fact has already been admitted by the Kohinoor steel Pvt. Limited in its letter dated 03-01-2015 through mail (page 34 of the memo of appeal), so it can not be alleged that JUVN had not provided the meter. It is admitted fact that as per clause 13.2.1 of the Supply Code regulation consumer has option to purchase meter and placed before the official of the Licensee for test the meter for correctness prior to installation but in this case Kohinoor steel Limited never take pain to purchase the meter and placed the same for testing before the licensee. Thus , in my view, there is no fault on the part of the JUVNL to replace the meter in time.

19- It is relevant to mention at very outset that first agreement between parties was executed on 14-12-2005 for contract demand of 1500 KVA and after enhancement of load of 2500 KVA, which comes to total load of 4000 KVA, **a fresh agreement was executed in between the parties..** Whereas , after enactment of Electricity Act 2003, Jharkhand State Electricity Regulatory Commission, Ranchi came into existence as per section 82 of the Electricity Act, who after proper hearing and considering the conditions of the prevalent situations, enacted Electricity Supply Code Regulation 2005, which was notified/ published in The Jharkhand Gazette on Thursday, 28th day of July 2005 and came into force after expiry of 3 months from the date of its publication and applicable to all Distribution Licensee in their respective licensed areas, in the State of Jharkhand. Clause 11.3 deals about the procedure in case of Billing in the event of Defective meters. Whereas Para 3 (c) of the H.T. agreement executed in between the parties on dated 24th , June, 2011 also provide the procedure in case of billing in the event of defective meter. **Now the main question arises before me that which provision shall prevail?** Before entering into discussion on this point I would like see the provision of agreement deed under Electricity Supply Code Regulation 2005. Chapter 7 of the electric supply code deals with Agreement. Clause 7.3 reads as under - The agreement shall include the following- (i)- Name and address of the consumer/ applicant, (ii)- address of the premises for which electricity supply has been requisitioned and for which the agreement is being executed, (iii)- sanctioned load/ contract demand, (iv)- Purpose of usage of electricity, (v)- Declaration by the applicant/consumer:- (a)- To abide by the provision of Act and these Regulation, (b)- To pay for the supply of electricity based on the prevailing Tariff rates, (c)- To pay for all other

charges payable in accordance with these Regulations and schedule of charges of the distribution licensee approved by the commission, (d)- To deposit such security money as the distribution licensee may be entitled to recover from him under the Act and these Regulation. The Kohinoor Steel Pvt. Limited has filed photo copy of the agreement deed in question, as Annexure 1. On perusal of the said agreement deed Annexure-1, I do find that it is an old format and it is not prepared as per Electricity Act, 2003 and Electricity Supply Code, Regulation, 2005. No declaration as per clause 7.3.(v) of the electric supply code 2005 has been given by the Kohinoor Steel Pvt. Limited. More over as per clause 11 of the agreement deed in question reads as under- *“This agreement shall be read and construed as subject in all respect to the provisions of the Indian Electricity Act , 1910, rules framed there under and the electricity(supply) Act 1948 together with rules, regulation (if any) tariff and terms and condition of the supply of electricity framed and issued there under for the time being force as for the same may respectively be applicable and all such provision shall prevail in case of conflict or inconsistency between them and terms and conditions of this agreement”*. Thus, it appears that agreement deed in question is not in accordance with Electricity Act 2003 and Electricity Supply Code Regulation 2005. It is true that this deed is relevant for this case but it is not admissible in the eye of law and parties of this case are not entitled to get benefit of any provision of this deed of agreement. Undoubtedly, when there is specific clause 11.3.1 of the Electricity Supply Code Regulation 2005 for procedure in case of billing in the event of defective meter. Parties of agreement can not go beyond the said provision and if they traveled beyond the scope of the said provision, then they would not be entitled to get the benefit of the terms added in agreement because the said term is

contrary to the provision of the Electricity Act, 2003 and Electricity Supply Code Regulation 2005. Admittedly, in clause 11.3.1 of the Electricity Supply Code Regulation 2005, it is specifically mentioned in second proviso - "*Provided further that in case the meter is defective or burnt and has stopped recording or lost, the consumer shall be billed on the basis of the average consumption of the last twelve months immediately preceding the month in which meter was last read (including that month) for the period of which meter was stopped recording subject to maximum period of three months.*" In fact, there is no provision in Supply Code Regulation, 2005 to take in to consideration to the conditions of working, during the month, under dispute and during the previous three months. The learned counsel appearing on behalf of Kohinoor Steel Pvt. Limited has placed reliance upon the case law, reported 1993 (2) PLJR 527, Dumraon Textiles Limited Vs The Bihar State Electricity. In my view, the principle of law settled in the said case is not applicable in the case, in hand under the facts and circumstances of the case, as discussed above, as per clause 11.3.1 of the Electricity Supply Code Regulation, 2005 and the agreement deed in question. Thus ,I do find that the learned VUSNF has arrived on correct finding that Electricity Supply Code Regulation 2005 has overriding effect over clause 3 (c) of the H.T . Agreement in question and JUVNL has not committed illegality in the preparation of energy bill for the month of November and December 2014 and rightly served the bill to Kohinoor Steel Pvt. Limited.

20- The next issue for adjudication before me is that **Energy bill for the month of January 2015 to April 2015 was genuine?** It is not admitted fact between the parties that Unit of Kohinoor Steel Pvt Limited was in lock out and no production was made during the month of

January 2015. The learned Additional standing counsel appearing on behalf of JUVNL has strongly contended that there is no relevancy of lock out in respect to the Electricity Act or Rules and More over, there is no such provision under the Electricity Act, 2003 , Rules and Regulation to take any consideration about lock out of any Unit. Therefore, the energy bill issued for that period is absolutely genuine. I have gone through the entire materials available on the record including L.C.R. and also perused the impugned judgment and accordingly , I do find that there is documentary evidence (Annexure 10 of the L.C.R.) on the record to show that production of sponge and electric consumption was nil during the month of January 2015 . It is admitted fact between the parties that electric connection of the Kohinoor Steel Pvt, Limited was disconnected on 27-01-2015 due to non payment of electric energy dues for the month of November and December 2014 and the same was restored on 25-02-2015, in-spite of that a revised bill for the month of Feb. 2015, on the average basis, was being raised against Kohinoor steel Pvt. Limited. Thus , taking in to consideration of the aforesaid fact and provision as per clause 11.3.1 of the Electric Supply Code Regulation 2005, I am of the view that energy bill for the month of January 2015 (from 01-01-2015 to 26-01-2015) was genuine, before disconnection of electricity, and liable to be revise only for that period but Bill in question from 27-01-2015 to 31-01-2015 was not genuine and is liable to be quashed and the bill for the month of Feb.2015 [from 01-02-2015 to 24-02-2015 (disconnected period)] was not justified and liable to be revise. Further, I do find that learned VUSNF has committed no error to quash the said bill and directed to the JUVNL to revise the bill for the month of Feb, 2015. Thus, I find and hold that the finding of the learned VUSNF

on this point is correct and here by affirmed subject to modification , as stated above.

21- So for the energy bill for the month of March 2015 and from 01-04-2015 to 15- 04-2015 is concerned, I do find that energy bill issued as per procedure in clause 11.3.1 of the Electricity Supply Code Regulation, 2005 and there is no illegality because the said bills are being issued on the basis of meter reading from the replaced new meter.

22- The last issue for adjudication before me is that **whether Kohinoor Steel Pvt. Limited is entitled for rebate in energy bill in term of Tariff order from the month of July 2015 on wards?** It is admitted fact that instant case was instituted before the learned VUSNF on 31-01-2015 just after disconnection of electric line on 27-01-2015 due to non payment of dues. Admittedly, due to lack of Quorum, VUSNF was not in proper function. It is also admitted fact that Kohinoor Steel Pvt, Limited agreed to pay the arrears dues amounting to the tune of Rs.1,08,56,503/00 in ten (10) installments and accordingly, signed an agreement deed on 25-02-2015 but Kohinoor Steel Pvt, Limited was not punctual in the payment of installments, consequently, a disconnection notice was again issued on 03-06-2015. Upon receiving the aforesaid notice , Kohinoor Steel Pvt, Limited knocked the door of the Hon'ble High court of Jharkhand by filing W.P (c) no.1180 of 2015, where after hearing the learned counsels of the both sides , the Hon'ble Court pleased to pass an order on 01-07-2015. Para 06 of the said order is very relevant, which reads as under:-

“ Considering the fact that the respondent Nigam has itself permitted the petitioner to make payment in 11 equal installment for which an agreement has been executed in the month of June 2015 and considering undertaking given on behalf of petitioner that it would continue to make

payment of the future monthly bills, it is hereby ordered that the petitioner shall make payment of an amount of Rs 10 lacs as ad-hoc payment, which would be subject to final adjustment, within a period of one week. If such payment is made by the petitioner within stipulated time, the electric connection of the petitioner shall not be disconnected. However, it is clarified that this order has been made on the understanding that the petitioner has already made payment for the bills which were raised in the month of Feb and March 2015”.

23- It is also relevant to mention at this juncture that on 14-09-2016 a further order has also been passed by the Hon’ble Court. The relevant portion of that very order is important to mention at here:- “*learned counsel for the petitioner submits that in the subsequent bill raised thereafter, which are the subject matter of challenge before the Forum, petitioner has raised the issue of non grant of rebate in terms of Tariff order 2012-13 as the instant bills are impliedly under stay on condition that petitioner deposits a sum of Rs. 10 Lacs as adhoc payment. Learned counsel for the Respondent – corporation submits that after deposit of Rs. 10 Lacs, petitioner continued to avail electricity connection pursuant to the interim order. However, the learned forum is not proceeding in the matter as the same is pending before this court. Learned counsel for the respondent – Corporation submits that once the forum has become functional and same grievances have been raised before the said Forum including challenge to the subsequent bill, petitioner should withdraw the instant writ petition to prosecute the matter before the learned forum. In the aforesaid background learned counsel for the petitioner seeks liberty to withdraw this writ petition however with prayer that the interim protection granted vide order dated 01-07-2015 be continued till the matter is decided by the learned Forum.*

Learned counsel for the corporation does not object to the said prayer. In the above view of the matter, this writ petition is dismissed as withdrawn to enable the petitioner to pursue the matter pending before the learned Forum in case no 01/ 2015. Interim protection granted by order dated 01-07-2015 however shall be effective till the matter is decided by the learned Forum in accordance with law. The learned Forum would however proceed to decide the matter expeditiously. All the pending interlocutory applications stand disposed of.”

24- The learned additional standing counsel appearing on behalf of JUVNL, as appellant in EOJ/ 08/2017 and respondent in EOJ/07/2017 has submitted that main object behind giving rebate is to encourage consumers to pay energy charges promptly and to pay it without any delay. It has further been submitted that in the present case, rebate was not granted to Kohinoor steel Pvt, Limited because of the fact that arrears of more than one crore was running in its name, details chart (Annexure-4) has been filed to Show the default. The learned additional standing counsel has given much stress towards the payment of November and December 2015 and submits that payment of that very month was not paid timely. The learned counsel appearing on behalf of Kohinoor Steel Pvt. Limited has submitted that payment of each month is being paid in the next coming month. Thus, there is no default, in payment of bills. Moreover, if there is delayed in payment of any bill, then, in that circumstances, Nigam can charge the delayed payment but can not denied the rebate. I have perused the chart and I do find that payment of bills have been made regularly. There is no default in payments of bills. It is true that there is delay of payment in few bills. Thus, taking in to consideration of the aforesaid facts., as discussed above, I find and hold that JUVNL has not made final adjustment rather they

have treated to the Kohinoor steel Pvt. Limited in arrear and denied to grant rebate in terms of Tariff order Since July 2015, which is against the spirit of the order of the Hon'ble High Court and tariff Order. Therefore, I find and hold that without making final adjustment, The JUVNL can not treat the KOHINOOR steel Pvt. Limited in arrear and KOHINOOR STEEL PVT. LIMITED is entitled to take benefit of the rebate in the energy bills from the month of July 2015 on wards. Therefore, the order passed by the Hon'ble High court is not only with respect to the disconnection of the electricity rather with respect to providing rebate also. Thus, I do find that learned VUSNF has meticulously considered the entire materials on record in proper perspective and has rightly come to the finding to allow the Kohinoor steel Pvt. Limited to get rebate on the energy bill from June 2015 (actually from July) on wards as per rule.

25- Having considered the entire facts and circumstances of the case & arguments advanced on behalf of both side, in both appeals, as discussed above, I find and hold that impugned judgment and order does not suffer with any illegality or irregularity, which requires an interference there in. In the result, it is therefore,

O R D E R E D

26- That, there is no merit in the both appeal and it fails, accordingly, both appeal is here by dismissed, subject to modification, as stated, in the preceding paragraph of this judgment. Under the facts and circumstances of the case, both sides shall bear their respective costs. Let copy of this order be given to the both sides.

Dated- 04- 12- 2017

Sd/-
(Prem Prakash Pandey)
Electricity Ombudsman

Dictated to the confidential assistant, transcribed and typed by him, corrected and signed by me, today.

Dated-04-12-2017

Sd/-
(Prem Prakash Pandey)
Electricity Ombudsman
