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Comments by M/s. JAI RAJ ISPAT LIMITED on petitions filed by TSDISCOMs for fresh determination of Cross Subsidy Surcharge to be levied for the FYs 2005-06 to 2014-15 in respect of the open access consumers under Section 42 of the Electricity Act, 2003 pursuant to directions given by the Hon'ble High Court of Telangana in its common Order dated 12.02.2020 in W.P.No.21936 of 2018 & Others

1. Context

1.1. The Southern Power Distribution Company of Telangana Limited (TSSPDCL) and the Northern Power Distribution Company of Telangana Limited (TSNPDCL) (together referred to as "Applicants or TSDISCOMs") filed petitions for determination of Cross Subsidy Surcharge (CSS) to be levied on Open Access (OA) consumers for the FYs 2005-06 to 2014-15 in respect of the open access consumers under Section 42 of the Electricity Act, 2003 pursuant to directions given by the Hon'ble High Court in its common Order dated 12.02.2020 in W.P.No.21936 of 2018 & Others.

1.2. The Telangana State Electricity Regulatory Commission (TSERC) has initiated fresh proceedings for the determination of Cross Subsidy Surcharge (CSS) for the financial years 2005-06 to 2014-15 in respect of Open Access consumers, following the directions of the Hon'ble High Court's common order dated February 12, 2020, in W.P. No. 21936 of 2018 and others. This action stems from a series of legal and regulatory challenges, including appeals and judgments by higher courts, addressing the methodology and computation of CSS by the erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC). In compliance with the High Court's directive, TSERC aims to reassess and finalize the CSS applicable to all Open Access consumers for the specified years.

1.3. 'We strongly objects to the proposed determination of Cross Subsidy Surcharge for the years FY 2005-06 to FY 2014-15.

2. Precedence

2.1. The decade from 2005-06 to 2015-16 was marked by significant power challenges in the state of Andhra Pradesh, characterized by acute energy and peak power deficits. These challenges severely impacted the state's industrial growth, economic stability, and overall quality of life for its residents. This period saw a combination of infrastructure inadequacies, financial constraints, and policy-related issues that compounded the power crisis in the region. The same is substantiated by below references in the orders of APERC.

Order in I. A. No. 13 of 2019

"... Though the R&C conditions were lifted with effect from 01.08.2013, The DISCOM was unable to meet the required demand due to which admittedly

JAI RAJ ISPAT LIMITED, Plot No. 8, Phase-III, I.D.A., Jeedimetla, Hyderabad - 500 055, Telangana. **CIN : U27109WB1984PLC038241**
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they have restored to declaring power holidays, without even seeking prior approval for the erstwhile APERC under Section 23 of the Act, 2003. **This clearly establishes that the respondents were not in a position to supply continuously and uninterruptedly and if they had approached the erstwhile APERC explaining the said situation, definitely, orders would have been issued imposing R & C once again, in which event, the DISCOM/ respondents would have been restrained from levying any deemed consumption charges**. The DISCOM/ respondents without any authority and authorization imposed these power holidays...."

2.2. APERC's determination of **cross subsidy surcharge and additional surcharge as 'Nil' for 2013-14**, with conditions attached to continuous power supply assurances from Discoms, has led to disagreements. Discoms claim that this determination neglects important legal and operational aspects, pushing for a compensatory surcharge instead. This ongoing legal and regulatory tussle complicates the power sourcing scenario for industries. The same charges were continued as 'Nil' for FY 2014-15.

2.3. Even in the **APERC's 15th Annual Report 2013-14,** this decision was re-iterated and the same is reproduced as below

"**3.3.2.** Under Section 42(2) and 42(4) of the Act the Commission initiated Suo-moto proceedings in O.P.No.54 of 2013 for determining the Cross Subsidy Surcharge and Additional Cross Subsidy Surcharge for the FY 2013-14 for Open Access users. In addition to inviting suggestions from the general public, it also conducted a public hearing on 06.08.2013. After examining all the submissions made by stakeholders, the Commission in its order dated 13.08.2013 ordered that the Cross-Subsidy Surcharge & Additional Surcharge be "Nil" for all Open Access consumers falling in the service areas of all the Discoms in the State for the FY 2013-14. However, **Discoms were given the liberty to approach the Commission afresh on Cross Subsidy Surcharge & Additional Surcharge proposals, during that Financial Year, if they could assure 100% power supply to all subsidizing consumers, for at least four (4) months consecutively**.

3.3.3. On 22.01.2014, the Commission dismissed the petition filed u/s 94 of the Act read with Clause 49 of CBR by the Discoms in R.P.No.1 of 2013 in the matter of review of the order of the Commission in O.P.No.54 of 2013 dated 13.08.2013 determining the Cross Subsidy Surcharge and Additional Cross Subsidy Surcharge of the FY 2013-14."

3. Power Supply Position in Andhra Pradesh

3.1. The decade from 2005-06 to 2015-16 was marked by significant power challenges in the state of Andhra Pradesh, characterized by acute energy and peak power deficits. The poor state of power supply position in the state of Andhra Pradesh between 2009-10 and FY 2014-15 and first year of formation of Telangana State.

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Table 1: LGBR position for the state of Andhra Pradesh

Particulars	Requirement	Availability	Surplus (+)/ Deficit (-)		Requirement	Availability	Surplus (+)/ Deficit (-)	
UOM	**MU**	**MU**	**MU**	**%**	**MW**	**MW**	**MW**	**%**
2015-16 (Telangana)	50,254	49,948	-307	-0.6%	6,854	6,849	-5	**-0.1%**
2014-15 (Andhra Pradesh)	1,03,732	87,901	-15,831	-15.3%	14,993	11,791	-3,202	**-21.4%**
2013-14 (Andhra Pradesh)	1,09,293	99,398	-9,895	-9.1%	15,955	13,985	-1,970	**-12.4%**
2012-13 (Andhra Pradesh)	99,734	76,979	-22,755	-22.8%	15,127	10,697	-4,430	**-29.3%**
2011-12 (Andhra Pradesh)	88,335	77,608	-10,727	-12%	13,916	11,336	-2,580	**-19%**
2010-11 (Andhra Pradesh)	85,072	75,227	-9,845	-12%	12,894	11,093	-1,801	**-14%**
2009-10 (Andhra Pradesh)	78,996	73,765	-5,231	-6.6%	12,168	10,880	-1,288	**-10.6%**

3.2. The poor power supply position can also be substantiated by the Govt. of Andhra Pradesh White Paper which is downloaded from the Govt. portal. **White Paper on Power Sector in Andhra Pradesh (https://ap.meeseva.gov.in/DeptPortal/Download-lat/White%20Paper%20on%20AP%20Power%20Sector_V10.pdf)**

> "Energy and Peak Deficit: The energy deficit in the state decreased to 1.5% in 2003-04 as against the all-India average of 7.1% while it increased to 17.6% during 2012-13 as against the all-India average of 8.7%. Similarly, there was no peak demand deficit during 2003-04 as against all India peak demand deficit of 11.2% while the peak deficit increased to 6.5% during 2013-14 as against all India peak demand deficit of 4.5%."

3.3. With this poor power position in the state of erst while Andhra Pradesh, the industries were forced to procure power through Open Access. The consistent energy and peak deficits in Andhra Pradesh have made it challenging for industries to rely

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solely on the power supplied by the state's distribution companies (Discoms). This situation has driven industries to source electricity through Open Access.

3.4. The persistent power deficits in Andhra Pradesh (& Telangana which was part of AP till 2014-15) have necessitated industries to source electricity through Open Access to ensure operational stability and cost efficiency. The regulatory and legal landscape surrounding cross-subsidy payments further complicates the situation, highlighting the need for a balanced approach to meet the energy demands of industrial consumers while ensuring the financial viability of Discoms.

4. Financial Burden

4.1. FTCCI submits that retrospective levy of such cross-subsidy surcharge on the industries shall put a huge financial burden on the industries making the future operations unviable. FTCCI has provided illustrations on the possible financial burden on the Open Access consumers with the proposed Cross subsidy Surcharge

Table 2: Possible Financial Impact on HT 1 132kV consumer

Year	Category	Voltage Level (kV)	Connected load (kVA)	Load Factor	Annual Consumption (kWh/ kVAh)	Proposed CSS (Rs./ kWh)	Net Burden
2005-06	HT I Industry Segregated	132	5,000	0.8	3,50,40,000	0.24	84,09,600
2006-07			5,000	0.8	3,50,40,000	0.52	1,82,20,800
2007-08			5,000	0.8	3,50,40,000	0.12	42,04,800
2008-09			5,000	0.8	3,50,40,000	0.56	1,96,22,400
2009-10			5,000	0.8	3,50,40,000	-	-
2010-11			5,000	0.8	3,50,40,000	-	-
2011-12			5,000	0.8	3,50,40,000	-	-
2012-13			5,000	0.8	3,50,40,000	0.03	10,51,200
2013-14			5,000	0.8	3,50,40,000	0.71	2,48,78,400
2014-15			5,000	0.8	3,50,40,000	0.71	2,48,78,400
Total Burden							**10,12,65,600**

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Table 3: Possible Financial Impact on HT 1 33kV consumer

Year	Category	Voltage Level (kV)	Connected load (kVA)	Load Factor	Annual Consumption (kWh/ kVAh)	Proposed CSS (Rs./ kWh)	Net Burden
2005-06	HT I Industry Segregated	33	1,000	0.8	70,08,000	-	-
2006-07			1,000	0.8	70,08,000	0.89	62,37,120
2007-08			1,000	0.8	70,08,000	0.44	30,83,520
2008-09			1,000	0.8	70,08,000	0.79	55,36,320
2009-10			1,000	0.8	70,08,000	-	-
2010-11			1,000	0.8	70,08,000	-	-
2011-12			1,000	0.8	70,08,000	-	-
2012-13			1,000	0.8	70,08,000	0.44	30,83,520
2013-14			1,000	0.8	70,08,000	1.13	79,19,040
2014-15			1,000	0.8	70,08,000	1.13	79,19,040
			Total Burden				**3,37,78,560**

Table 4: Possible Financial Impact on HT 2 132kV consumer

Year	Category	Voltage Level (kV)	Connected load (kVA)	Load Factor	Annual Consumption (kWh/ kVAh)	Proposed CSS (Rs./ kWh)	Net Burden
2005-06	HT II Industry Others	132	5,000	0.8	3,50,40,000	1.96	6,86,78,400
2006-07			5,000	0.8	3,50,40,000	1.51	5,29,10,400
2007-08			5,000	0.8	3,50,40,000	1.47	5,15,08,800
2008-09			5,000	0.8	3,50,40,000	2.13	7,46,35,200
2009-10			5,000	0.8	3,50,40,000	-	-

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Year	Category	Voltage Level (kV)	Connected load (kVA)	Load Factor	Annual Consumption (kWh/ kVAh)	Proposed CSS (Rs./ kWh)	Net Burden
2010-11			5,000	0.8	3,50,40,000	0.51	1,78,70,400
2011-12			5,000	0.8	3,50,40,000	0.89	3,11,85,600
2012-13			5,000	0.8	3,50,40,000	1.62	5,67,64,800
2013-14			5,000	0.8	3,50,40,000	2.31	8,09,42,400
2014-15			5,000	0.8	3,50,40,000	2.31	8,09,42,400
Total Burden							51,54,38,400

Table 5: Possible Financial Impact on HT 2 33kV consumer

Year	Category	Voltage Level (kV)	Connected load (kVA)	Load Factor	Annual Consumption (kWh/ kVAh)	Proposed CSS (Rs./ kWh)	Net Burden
2005-06	HT II Industry Others	33	1,000	0.8	70,08,000	1.18	82,69,440
2006-07			1,000	0.8	70,08,000	1.95	1,36,65,600
2007-08			1,000	0.8	70,08,000	2.03	1,42,26,240
2008-09			1,000	0.8	70,08,000	1.96	1,37,35,680
2009-10			1,000	0.8	70,08,000	-	-
2010-11			1,000	0.8	70,08,000	1.30	91,10,400
2011-12			1,000	0.8	70,08,000	1.49	1,04,41,920
2012-13			1,000	0.8	70,08,000	1.81	1,26,84,480
2013-14			1,000	0.8	70,08,000	3.15	2,20,75,200
2014-15			1,000	0.8	70,08,000	3.15	2,20,75,200
Total Burden							12,62,84,160

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We urge the Hon`ble Commission to not allow the retrospective levy of such cross-subsidy surcharge on the industries, as it shall put a huge financial burden on the industries making the future operations of industries in Telangana unviable and unsustainable.

5. Retrospective Penalties on Industries

5.1. It is submitted that in a judgment, Hon'ble Supreme Court in the case of Binani Zinc Limited v. Kerala State Electricity Board (Civil Appeal No. 3492 of 2006), held that the Commission not been empowered to frame tariff with retrospective effect. Hence, **imposition of any tariff with retrospective effect so as to cover the period prior to formation of the Telangana State Electricity Regulatory Commission (TSERC), is not valid.** Attached as annexure-1.Relevant excerpts from the judgment are provided hereunder:

> "30. The Commission has been empowered to frame tariff. It is, however, not been empowered to frame tariff with retrospective effect so as to cover a period before its constitution. The matter might have been different if such a power has been conferred on the Commission. It is now a well settled principle of law that the rule of law inter alia postulates that all laws would be prospective subject of course to enactment an express provision or intendment to the contrary."

5.2. The retrospective determination of Cross Subsidy Surcharge (CSS) solely for the state of Telangana, as petitioned by the Telangana State Power Distribution Companies (TSDISCOMs), is fundamentally flawed and legally unsustainable on several grounds:

a) Unified Regulatory Jurisdiction: During the period from 2005-06 to 2014-15, the states of Telangana and Andhra Pradesh were a unified entity under the jurisdiction of the Andhra Pradesh Electricity Regulatory Commission (APERC). The regulatory and statutory decisions, including the determination of CSS, were uniformly applicable to the entire erstwhile state and TSDiscoms can into existence only after 2014-15, hence the question of separate applicability for TSDiscoms does not arrive.

b) Principle of Legal Uniformity: Any retrospective imposition of CSS should be based on the regulatory and operational conditions that were prevalent during the relevant period. The current petition, which seeks to determine CSS exclusively for Telangana, disregards the uniform regulatory framework that governed the entire undivided Andhra Pradesh. This selective application results in a fragmented and inconsistent regulatory approach, which is contrary to the principles of legal uniformity and fairness.

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c) Economic and Operational Disparities: The determination of CSS based on the conditions that existed in the unified state, but applying it retrospectively only to Telangana, creates an undue financial burden on industries operating in Telangana. These industries are being penalized for historical conditions over which they had no control, leading to an undue loss that is punitive in nature. Such a retrospective charge disregards the operational and economic realities of the time and imposes a disproportionate financial burden on the current industrial landscape.

d) Precedent of Judicial Directives: While the Hon'ble High Court has directed the Telangana State Electricity Regulatory Commission (TSERC) to freshly determine the CSS, it is imperative that such determination takes into account the unified regulatory context of the erstwhile Andhra Pradesh. Any deviation from this approach not only contravenes the judicial directive but also undermines the principles of natural justice and equitable treatment.

e) Regulatory Precedent and Fairness: The principles of regulatory precedent and fairness necessitate that any retrospective determination of charges should uniformly apply to all regions and stakeholders affected by the historical regulatory framework. The current petition violates this principle by selectively targeting Telangana, thereby creating a regulatory anomaly and economic disparity.

5.3. In this regard, it is evident that the retrospective determination of CSS solely for Telangana, based on conditions existing during the unified Andhra Pradesh, is legally untenable. It results in an undue financial burden on industries and violates principles of regulatory consistency, legal uniformity, and natural justice. The petition should be reconsidered to ensure fair and equitable treatment of all stakeholders within the historical regulatory framework of the erstwhile unified state.

6. Impact of retrospective levy of Cross Subsidy Charges

6.1. The retrospective levy of Cross Subsidy Surcharge (CSS) can have significant adverse effects on the industrial sentiment and reputation of a state. CSS is a charge levied on Open Access consumers, primarily industries, to compensate Discoms for the revenue loss due to the provision of subsidized electricity to other consumer categories. Implementing this surcharge retrospectively can create uncertainty and financial strain on industries, affecting their perception of the state's business environment and investment attractiveness.

a) Unplanned Costs: Retrospective CSS imposes unplanned financial liabilities on industries, disrupting their budget allocations and financial planning. This sudden imposition can lead to cash flow challenges, particularly for small and medium enterprises (SMEs) operating on tight margins.

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b) Operational Disruptions: The need to allocate funds to pay retrospective CSS can divert resources from critical operational and expansion activities, hampering growth and productivity.

c) Higher Electricity Costs: Retrospective CSS increases the overall cost of electricity for industries, which can reduce their competitiveness, especially in energy-intensive sectors. Higher operational costs can make products from the state less competitive in national and international markets.

d) Impact on Long-term Contracts: Industries with long-term power purchase agreements (PPAs) might face difficulties as retrospective charges could negate the cost benefits anticipated at the time of contract signing.

e) Eroded Trust: Retrospective policy changes erode trust between the government and the industrial sector. Industries require a stable and predictable policy environment to make long-term investments. Frequent and retroactive changes can be perceived as a lack of commitment to business-friendly practices.

f) Regulatory Risk: The perception of high regulatory risk can deter potential investors, as they may fear unexpected policy shifts that could adversely affect their operations and profitability.

g) Investment Deterrent: A state perceived as having an unpredictable and punitive regulatory environment is less attractive to investors. Retrospective CSS can be seen as penalizing businesses for past compliance with then-current regulations, discouraging new investments.

h) Reputational Damage: The reputation of the state as a business-friendly destination is critical for attracting investment. Retrospective charges damage this reputation, potentially leading to a decline in investment inflows and slowing economic growth.

i) Relative Attractiveness: States compete with each other to attract investments. A retrospective CSS can make a state less attractive compared to others with more stable and transparent policies. Investors might prefer regions where the regulatory framework is predictable and supportive of business growth.

j) Impact on Existing Businesses: Existing businesses might reconsider expansion plans or even relocate to more favorable environments if retrospective charges significantly impact their cost structure and profitability.

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7. **Methodology adopted for calculating CSS**

7.1. The 'average tariff' approved in the tariff order translates/ assumes a significantly lower load factor for HT industries. While this calls for a thorough prudence check on the part of this Hon'ble Commission, it also emphasizes the unfairness to industries which maintain high load factor. There is a direct relationship between load factor and average tariff; as the load factor increases, the average tariff reduces. The lower load factor assumption to project average tariff has prejudiced the industrial consumers as it has led to higher Cross Subsidy Surcharge estimation. The lower load factor assumption is also not reflective of the consumption and load pattern of the industries in the State.

7.2. In addition, the Electricity Act and National Tariff Policy mandate the promotion of Open Access so that consumer gains the advantage of affordable power and Generators find an alternative Market while DISCOMs are not put to losses on account of shifting consumers. The 'S-I' sector under which our state of Telangana is classified in the Energy Market Map has been at a disadvantage comparatively mainly on account of restricted interstate corridor capacity which is leading to lower Supply and there by higher demand and consequent higher rates. Keeping in view this inherent disadvantage caused by historical infrastructural constraints leading to higher basic market rates despite a glut in certain neighboring States and the need to provide affordable power at competitive rates to the Manufacturing Sector, Cross Subsidy need not be pegged at the ceiling rate of 20% tariff but at a much lower limit. For the purposes of calculation of Cross Subsidy Surcharge, the 'average tariff' i.e. 'T' shall be reckoned with respect to each individual industrial consumer. Alternately, the 'average tariff' i.e 'T' shall be calculated considering Load Factor of 85% which is reflective of the prevalent load profile of HT category of industries. Therefore, the Hon'ble Commission may approve the Cross Subsidy Surcharge as per the rates suggested by them considering 10% of average tariff based on a load factor of 85%.

7.3. In addition, the tariff order data should be the basis for determining the CSS. The consumers with higher load factor contribute less to the Discoms by way of cross subsidy. Only these consumers are more likely to consider open access as an option. The load factor of given consumer should be borne in mind while determining CSS. The average realization 'T' for will differ for every consumer even within the same category. Any given consumer in any case is obligated to pay the minimum demand charges specified in the tariff order. Also, the methodology adopted is not at all clear as how the Average Realization for each consumer category has been worked out. The values are quite abnormal. Nowhere is the method made transparent or explained.

7.4. Further, in the revised CSS filings of the Licensees, they have **considered 'T' as average realization applicable instead of tariff applicable. 'T' should exclude demand charges as the open access consumers already pay minimum charges or MD charges whichever is higher**. The same approach has been followed by **APERC in the matter of determination of CSS for APDiscoms (the**

JAI RAJ ISPAT LIMITED, Plot No. 8, Phase-III, I.D.A., Jeedimetla, Hyderabad - 500 055, Telangana. **CIN : U27109WB1984PLC038241**
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appropriate commission for the state of Telangana, erstwhile Andhra Pradesh)] for the period in contention till FY 2014-15) as mentioned in the order dated 19th November 2016, and it should be adopted by this Hon`ble TSERC also. Accordingly, the TSDiscoms should submitted revised "T" for computation of CSS. Order attached as annexure-2 for reference.

7.5. Also, the cap on CSS should be 10% of tariff for given category of consumer. Avoided Cost methodology as filed by the Licensees in the ARR proposals for determination of CSS may be adopted as the TSSPDCL and TSNPDCL will not be put to any financial disadvantage and NTP 2016 provides leverage to the Commission to review and deviate from the CSS formula taking in to consideration the different circumstances prevailing in the area of distribution licensee. Since the Licensees have not made any proposals for additional CSS, the same is concluded as 'NIL'. Keeping in view the languishing manufacturing sector to remain globally competitive due to globalization, FTA, there is a need to reduce input costs by all means. For arriving at 'T', only energy charges should be considered. For every open access user, 'T', the average tariff realization should be calculated independently based on the specific consumers load factor. Whether the new formula for CSS is appropriate considering that CSS being levied as part of the tariff is well above the mandate of +20% of the COS?

8. Consistency with the Orders passed the Courts

8.1. We also submits that, no retrospective wheeling charges should be levied or charged on consumers, in line with these proceedings of **retrospective determination of Cross Subsidy Surcharge (CSS).** This stance is strongly supported by the precedent set by the **High Court of Telangana in its order dated 19.12.2023 in W.P. No. 8252 of 2008 and others**. The High Court unequivocally quashed the demand notices for cross-subsidy surcharge levied retrospectively, emphasizing that such actions are contrary to legal principles and regulatory orders. The court highlighted that the imposition of these charges, without proper authority and justification, creates an undue financial burden on the consumers, which is both legally unsustainable and unfair. The principles outlined in the High Court's decision should be adhered to, ensuring that consumers are not subjected to retrospective financial liabilities that disrupt their economic planning and operational stability. Therefore, any attempt to impose retrospective wheeling charges must be rejected to maintain regulatory fairness and protect the financial interests of consumers. The order is attached as annexure-3.

9. Prayers

We respectfully prays that the Hon'ble Commission:

a) Consider the above Objections and submissions;
b) May disallow retrospective levy of cross subsidy surcharge on the industries

JAI RAJ ISPAT LIMITED, Plot No. 8, Phase-III, I.D.A., Jeedimetla, Hyderabad - 500 055, Telangana. **CIN : U27109WB1984PLC038241**
Phone : +91-40-23191234, Fax : +91-40-23198464, E-mail : admin.jdm@jairajispat.com, Website : www.jairajispat.com.
Regd. Office : 11-B, Jatindra Mohan Avenue, Kolkata - 700 006. Phone : +91-033-25339615, 25338849

c) May continue to adopt the same approach as that of APERC (for FY 2013-14 & 2014-15) in the erstwhile state of Andhra Pradesh in allowing "NIL" Cross Subsidy Surcharge on the basis of the in-ability of discoms to provide reliable electricity to the consumers for the entire period of contention.

d) May review and consider the "T" as average realization instead of Tariff applicable

e) May disallow the claim for separate determination of Cross Subsidy Surcharge by TSSPDCL and TSNPDCL.

f) Pass necessary orders as may be deemed appropriate in the facts and circumstances of the case in the interest of competition, as has been enshrined in the Electricity Act;

For **JAI RAJ ISPAT LIMITED**

Suneel Babu KATAKAM
General Manager (Legal)

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