

**Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)**

I.A. No. 458 of 2015
in
DFR No. 2385 of 2015

Dated: 28th April, 2016

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

In the Matter of:

Jindal Steel & Power Limited

...Appellant(s)

Versus

Raigarh Ispat Udyog Sangh & Anr.

... Respondent(S)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Mr. Jayant Bhushan, Sr. Adv.
Ms. Divya Chaturvedi
Ms. Shikha Pandey
Mr. Sukhsam Chauhan

Counsel for the Respondent(s) : Mr. Amit Kapur
Mr. Vishal Anand for R-1

Mr. C.K. Rai and
Mr. Paramhans for Respondent Commission

ORDER

PER HON'BLE JUSTICE MR. SURENDRA KUMAR, JUDICIAL MEMBER

1. I.A. No. 458 of 2015 in DFR No. 2385 of 2015 has been filed by the Applicant/Appellant, namely Jindal Steel & Power Limited praying for Condonation of Delay (CoD) of 284 days in filing the present

appeal on the ground that the said time was taken due to the pendency of the Review Petition.

2. The present time-barred appeal has been filed by the Appellant M/s. Jindal Steel & Power Limited (JSPL) against the Review Order dated 01.10.2015 (“**Imugned Review Order**”) passed in Petition No. 07/2015 (M) and the Tariff Order dated 23.12.2014 (“**Impugned Order**”) passed in Petition No. 12/2014 (T) by the Chhattisgarh State Electricity Regulatory Commission (“**hereinafter referred to as State Commission**”).
3. The Petition No. 12/2014 (T) was adjudicated upon by the State Commission pursuant to the directions of this Appellant Tribunal made in its Judgment dated 07.03.2014 in Appeal No. 89 of 2012 in the matter of RIUS vs. CSERC & Anr., whereby this Appellate Tribunal directed the State Commission to determine the surplus power of the Appellant’s CPP after meeting the requirement of the captive load of the steel plant and load pattern in the licensed area of the Applicant/Appellant and the same should have been considered part of the energy of the supply in the licensed area from the CPP of the Applicant/Appellant. However, in spite of the submissions of data regarding available load pattern of power from Appellant’s CPP at Raigarh, the State Commission omitted to carry

out the exercise of determining the pattern of surplus power and focused only on the issue of submission of segregated accounts and passed the Impugned Order dated 23.12.2014. Consequently, the tariff of the Applicant/Appellant for supply of power to JIP was reduced to Rs. 2.50 per Kwh vide the Impugned Order. Aggrieved with such reduction of tariff as well as return of no finding regarding the issue of the surplus power by the State Commission, the Appellant preferred the aforesaid Review Petition along with segregated accounts from the year of its distribution license i.e. from FY 2005-06. The Appellant was under the bonafide belief that the State Commission had committed an error apparent on the face of records by not examining the surplus power and thus, preferred the route of filing the Review Petition. During the pendency of the Review Petition before the State Commission, the Appellant had also indicated its willingness to supply power to Dongamahua CPP and in that regard had submitted its petition for power costing of Dongamahua CPP.

4. The Respondent, State Commission vide Impugned Review Order dated 01.10.2015 without considering the submission of the Appellant, failed to return any finding on the issue of determination of the surplus power available from Raigarh CPP as well as the tariff

and has insisted upon power costing of the Raigarh CPP even though no surplus power is available from Raigarh CPP.

5. The State Commission has disposed of the aforesaid Review Petition vide Impugned Order dated 01.10.2015, the relevant part of which is quoted below:

“32. Accordingly, the plea of petitioner is rejected and JSPL is directed to file petition for determination of cost of generation of its captive power plant for year 2009-10 and onwards at earliest.

33. JSPL is seeking review order from this Commission that it is not at all obliged to strictly adhere to the sources of power as indicated either in the application made for grant of distribution license or the order dated 29.09.2005 granting distribution license to the Review Petitioner, for supply to the OPJIP consumers, and also that there is no obligation for them to supply power to the OPJIP consumers from the Dongamahua Captive Power Plant. This Commission is not at all empowered to review or alter the decision of Appellate Tribunal. The Appellate Tribunal in Judgment passed in Appeal No. 89 of 2012 has held that power requirement of JSPL distribution business has to be in accordance with MOU with the State Govt. And licence application. This observations and directions of Appellate Tribunal cannot be subject to review by this Commission.

34. JSPL is also seeking relief that in the event of sourcing power to the OPJIP consumers from the Captive Power Plant, its surplus power shall be calculated, post meeting the minimum 51% captive consumption criteria as per Rule 3 of the Electricity Rules, 2005, and any other firm agreement with a third party. In this Petition surplus power of captive generating plant of JSPL is not evaluated. The surplus power from captive generating plant of JSPL shall be decided in accordance with the provisions of law”. enunciate

6. The reasons resulting in delay of 284 days in filing the instant appeal have been enunciated by the Applicant/Appellant in the delay condonation application submitting that the Applicant received

certified copy of the Impugned Review Order on 05.10.2015. The present Appeal *qua* the Impugned Review Order has been filed within the prescribed period of limitation in terms of Section 111(2) of the Electricity Act 2003 i.e. within 45 days of receiving the copy of the Impugned Review Order.

7. The Applicant filed the aforesaid Review Petition under bonafide belief that there is an omission on the part of the State Commission and the said error is apparent on the face of the records. The Review Petition was filed before the State Commission on 20.01.2015 i.e. within 30 days of receiving the copy of the Impugned Order. Since the State Commission had failed to follow the direction given by this Appellate Tribunal vide Judgment dated 07.03.2014, wherein the Respondent State Commission had to evaluate the availability of surplus power in Applicant/Appellant's Captive Power Plant. Hence, the said Review Petition under bonafide belief was filed by the Appellant against the Impugned Order. The Learned Counsel for the Applicant/Appellant on the point of consideration of delay has relied on DSR Steel (Private) Limited vs. State of Rajasthan and Ors. Reported in (2012) 6 SCC 782, wherein the Hon'ble Supreme Court has held that time taken by a party in diligently pursuing the remedy by way of review may in appropriate

cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the Review Petition. The same view has been upheld by this Appellate Tribunal in its Judgment dated 02.12.2013 in Appeal No. 88 of 2013 in the case of NTPC vs. CERC.

8. The objections to the said delay condonation application have been filed on behalf of the Respondent 1, M/s Raigarh Ispat Udyog Sangh (RIUS), which are as under:
 - a) that the incorrect statements made in the application;
 - b) that the incorrect statement to explain the delay itself is sufficient to reject the said application without any further inquiry as held in *Pundlik Jalam Patil vs. Jalgaon Medium Project* (2008) 17 SCC 448.
 - c) that from the perusal of the broad issues raised in the Review Petition along with the prayers made in the Review Petition, it is evident that the Applicant/Appellant had never prayed before the State Commission to examine the surplus power available from its Captive Power Plant.
 - d) that the Applicant/Appellant while filing the Review Petition endeavours to add some more prayers which were never

discussed in the Judgment of this Appellate Tribunal while remanded the matter back to the State Commission. The Applicant/Appellant added one new prayer to the Review Petition i.e. to direct that surplus power to be calculated, in the event the Review Petitioner chooses to source power to the OPJIP consumers from the Captive Power Plant, is to be calculated post meeting the minimum 51% captive consumption criteria as per Rule 3 of the Electricity Rules 3 of the Electricity Rules, 2005 and any other firm agreement with a third party. This Appellate Tribunal did not give any such direction to the State Commission while remanding the matter back.

e) that the Learned State Commission pursuant to the directions of the Appellate Tribunal directed the Applicant/Appellant to provide surplus power available from its Captive Power Plant located at Dongamahua and Raigarh. The State Commission in line with the directions of the Appellate Tribunal rejected the prayer of the Applicant/Appellant that the surplus power is to be considered only from Captive Power Plant at Raigarh.

9. We have heard Mr. Sanjay Sen, Learned Senior Counsel for the Applicant/Appellant as well as Mr. Vishal Anand Learned Counsel for Respondent No. 1, i.e. Consumer Group, at length. We have

also heard Mr. C.K. Rai for Respondent No. 2, namely State Commission and also gone through the contents of the delay condonation application being I.A. No. 458 of 2015, the Respondent No. 1 has simply stated that it is trite law that incorrect statements made in the application seeking Condonation of Delay itself is sufficient to reject the application without any further inquiry to see whether the application reveals sufficient cause to condone the delay. In the objections raised by the Respondent No. 1 against the Delay Condonation application, the nature of the incorrect statements or in what way the said statements are incorrect has not been mentioned.

Barring the aforesaid additional prayer in the Review Petition, we find that the Applicant/Appellant under bonafide belief, filed the aforesaid Review Petition seeking review of the Tariff Order dated 23.12.2014 (Impugned Order) which has been disposed of vide, Impugned Order dated 1.10.2015. As soon as a copy of the Impugned Order dated 01.10.2015 was received by the Appellant on 05.10.2015, the Review Petition was filed within prescribed limit of 45 days of receiving the copy of the Impugned Order. Thus, the said delay of 284 days in filing the instant appeal has been properly and legally explained by the Applicant/Appellant submitting that the said

time was taken due to the pendency of the Review Petition which was filed by the Applicant/Appellant under bonafide belief. Thus, there is sufficient reason to condone the said delay and accordingly the said delay is hereby condoned. Consequently, the IA No. 458 of 2015 in DFR No. 2385 of 2015 is hereby allowed and the said delay is hereby condoned. The appeal shall be treated to have been filed within time.

Post this matter for hearing on admission on **03.05.2016.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

REPORTABLE / ~~NON-REPORTABLE~~