

**COURT – I**

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

**IA NO. 1553 OF 2018 IN  
DFR NO. 3178 OF 2018**

**Dated: 31<sup>st</sup> January, 2019**

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson  
Hon'ble Mr. S.D. Dubey, Technical Member**

**In the matter of :**

**Damodar Vallye Corporation  
Vs.**

**... Appellant(s)**

**West Bengal Electricity Regulatory Commission  
& Ors.**

**... Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran  
Ms. Ranjitha Ramachandran  
Ms. Anushree Bardhan  
Ms. Poorva Saigal  
Mr. Shubham Arya

Counsel for the Respondent(s) : Mr. Pratik Dhar, Sr. Adv.  
Mr. C.K. Rai  
Mr. Sachin Dubey for R-1

Mr. Rajiv Yadav for R-2

**ORDER**

With the consent of the parties, this application is taken up today.

There is 1143 days delay in filing this appeal. In this application, the Applicant has prayed that the delay in filing the appeal may be condoned.

This Application came to be filed seeking condonation of delay of 1143 days in terms of the specified period envisaged under Sub Section (2) of Section 111 of the Electricity Act, 2003. By way of explanation, the Appellant-Damodar Valley Corporation (“**DVC**”) contends that after disposal of the Original Petition on 25.05.2015 since there were errors apparent on the face of the record, the Appellant filed a Review Petition being No.TP(R)-25/15-16 before the State Commission. The said petition was kept pending by the State Commission for almost three years. Ultimately, DVC had to file another Original Petition being O.P. No. 3 of 2017 before this Tribunal seeking a direction to the State Commission to dispose of the Review Petition pending before it. Ultimately, the Review Petition came to be disposed of on 12.07.2018 rejecting the grounds raised by DVC.

Thereafter, according to the Appellant, the delay occurred due to the following reasons:

*“7. After the receipt of the said order DVC began the process of analyzing the impact of the orders dated 25.05.2015 and 12.07.2018. This process took some time as there were a number of tariff elements and other financial aspects which were considered by DVC. DVC subsequently on or around 23.7.2018, consulted with its advocates about the legal course of action to be undertaken. Thereafter, pursuant to discussions between DVC and its advocates, the draft of the appeal was sent by the office of DVC’s advocate to DVC through email on*

*20.08.2018. Thereafter the draft of the appeal to be filed before this Tribunal was finalised and approved by DVC on 21.08.2018.*

*8. On 27.08.2018, the officer in charge of the matter came to the Advocate's office and the appeal papers were finalised and duly signed. On 27.08.2018 the appeal was filed by DVC before this Hon'ble Tribunal."*

This application is strongly opposed by the contesting Respondent contending that one consumer had filed an appeal against the original Order dated 25.05.2015 wherein the present Appellant was also a party. The said appeal being Appeal No. 206 of 2015 came to be disposed of on 29.10.2018. They further contend that in spite of filing its reply to the said appeal the present Appellant had not placed on record the pendency of the Review Petition filed by it before the State Commission. Similarly, another appeal being Appeal No. 190 of 2015 between Maithon Power Limited Vs. West Bengal Electricity Regulatory Commission which was also preferred against the same order and was very much within the knowledge of the present Appellant. Respondent's counsel strenuously contend that for not placing the above material facts on record, condonation of delay application deserves to be rejected.

As a rejoinder to the reply of the contesting Respondent, the Appellant filed an additional affidavit bringing on record several facts to

substantiate its defence that there was no intentional concealment of facts of any nature on their part.

The Appellant further explains as under:

- (a) On 23.07.2015, DVC filed a Review Petition being No. TP(R)-25/15-16 before the State Commission.
- (b) The review petition no. TP(R)-25/15-16 filed by DVC was not taken up for hearing by the State Commission and no reason was communicated to DVC as to why the petition is not being listed for hearing.
- (c) DVC had been pursuing with the State Commission from the beginning of September 2015 and the officers of DVC had also met with the officials of the State Commission for early disposal and decision in the review petition. In this regard, DVC officials requested the officials of the State Commission to decide the review petition, whenever they visited the office of the State Commission for other petitions and proceedings.
- (d) As no response to its request was received and having no other alternative, on 6.3.2017 DVC filed an Original Petition being O.P. No. 3 of 2017 before this Tribunal praying amongst others a direction to the State Commission to dispose of the Review petition No. TP(R)-25/15-16 filed by DVC against the impugned order dated 25.5.2015.
- (e) The Original Petition No. 3 of 2017 was listed before this Tribunal on 17.4.2017 and notice was issued to the respondents. On 17.5.2017, time was given to the respondents to file their reply. By order dated 24.7.2017, this Tribunal directed the parties to complete the pleadings in the matter by 10.10.2017. Thereafter the matter was listed on various dates for completion of pleadings.

- (f) DVC had also written a letter to the State Commission on 25.9.2017, apprising the State Commission of the pending petitions including the Review Petition No. TP(R)-25/15-16.
- (g) On 26.4.2018, the matter was argued by the counsel for DVC and the matter was listed for further hearing on 14.8.2018. On 14.8.2018, the counsel for one of the Respondents took some time to file additional documents and the matter was listed for hearing on 14.11.2018. On 14.11.2018, the matter has been directed to be listed for hearing on 31.1.2019. Thus, the Original Petition No. 3 of 2017 is pending before this Tribunal.
- (h) In the meantime, in the cross appeal being no. 206 of 2015 filed by the Damodar Valley Consumer Association against the impugned order dated 25.5.2015, DVC filed its reply on 11.2.2016 and filed its written submissions on 13.3.2018. In both the reply and the written submissions, DVC had stated that it had filed a review petition on 23.7.2015 against the impugned order before the State Commission and that the review petition is pending. The appeal was dismissed by this Tribunal on 29.10.2015.
- (i) On 12.7.2018, the State Commission on its own, without conducting any hearing in the Review Petition no. TP(R)-25/15-16 passed an order rejecting the issues raised by DVC in the review petition against the order dated 25.5.2015.
- (j) The order dated 12.7.2018 passed in the Review Petition being Case No: TP(R)-25/15-16 was communicated to DVC on 12.7.2018.
- (k) Pursuant to the communication of the review order, DVC began the process of analysing the impact of the orders dated 25.5.2015 and 12.7.2018."

- (l) On 13.7.2018, the Deputy Chief Engineer (Commercial) of DVC, appraised the Executive director (Commercial) about the review order dated 12.7.2018 (wherein all the claims of DVC were rejected) and discussions were held with regard to the next course of action to be taken. Thereafter, Executive Director (Commercial) discussed the issues with Additional Director (Law) and pursuant thereto the financial implications of the dismissal of DVC's claims were put before the Member Finance for his perusal. This process took some time as there were a number of tariff elements and financial aspects which were considered by the various departments. It was unanimously decided that the dismissal of DVC's claims by the State Commission needs to be challenged.
- (m) On 23.7.2018, DVC consulted its legal counsel about the legal course of action to be taken. It was advised by the counsel of DVC that as all the claims of DVC in the Review Petition has been rejected by the State Commission vide its order dated 12.7.2018, DVC has to challenge the main order dated 25.5.2015 passed by the State Commission.
- (n) Between 23.07.2018 and 19.08.2018, discussions were held between the officers of DVC and its legal counsel inter alia, on the various clarifications sought by the legal counsel related to the tariff elements, the pleadings filed before the State Commission, opportunities given to DVC by the State Commission during the review petition proceedings, the implication of the proceedings before this Tribunal namely Original Petition no. 3 of 2017 and Appeal no. 206 of 2015 etc.
- (o) Subsequent to the above, the draft of the appeal was sent by the counsel to DVC through email on 20.8.2018. Thereafter the draft of

the appeal to be filed before this Tribunal was finalised and approved by DVC on 21.8.2018.

(p) On 27.8.2018, the officer in charge of the matter came to the counsel's office in Delhi from Kolkata and the appeal papers were finalized and duly signed. On 27.8.2018 the appeal was filed by DVC before this Tribunal."

On perusal of the first affidavit and the additional affidavit filed in support of condonation of delay application, it indicates that there was no intentional withholding of any facts by the Appellant. On the other hand, pendency of the Review Petition for the last three years is not denied. The reason for the delay in filing the present appeal is explained by the Appellant stating that they were pursuing the review petition with all endeavour and were hoping an early disposal of the said petition. They further believed that in Review Petition they would get the controversy resolved. Therefore, till the Review Petition came to be rejected, there was no occasion for the Appellant to think, analyse the situation and file the appeal. Merely because the other set of parties have filed appeals challenging the Order dated 25.05.2015, it does not mean that all other parties to the same proceedings need to file appeal. It depend on the advice (legal) they receive and probably they believed that Review Petition would be the proper solution instead of appeal, In that view of the matter, we are of the opinion that the Appellant has

placed sufficient material and the explanation as to why the delay of 1143 days is caused. We accept the said explanation and condone the delay of 1143 days in filing the appeal.

The Application is allowed.

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Registry is directed to number the appeal.

Learned counsel for the Respondents may file reply on or before 28.02.2019 with advance copy to the other side. Thereafter, rejoinder may be filed on or before 25.03.2019 with advance copy to the other side.

List the matter for admission on **29.03.2019**.

**(S. D. Dubey)**  
**Technical Member**

**(Justice Manjula Chellur)**  
**Chairperson**