

COURT-II

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

IA Nos. 329 of 2015 and 330 of 2015 in DFR No. 1486 of 2015

Dated: 20th January, 2016

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the matter of :

Mohit Industries Ltd.

... Applicant/Appellant(s)

Versus

Gujarat Electricity Regulatory Commission & Ors.

... Respondent(s)

Counsel for the Appellant (s) : Mr. S. B. Upadhyay, Sr. Adv. Along with
Mr. Sahil Jakharia and Mr. Kaustav
Counsel for the Respondent (s) : Ms Suparna Srivastava for R.1
Mr. M.G. Ramachandran , Ms. Ranjitha
Ramachandran and Mr. Shubham Arya for
R.2 & 3

ORDER

IA No. 329 of 2015

IA No. 329 of 2015 in DFR No. 1486 of 2015 seeking leave to file appeal has been heard today. Mr. S.B.Upadhyay, senior counsel appearing for the appellant has taken us to show that the applicant is the aggrieved party. The respondents have no objection. Consequently, this Interlocutory Application, being No. 329 of 2015, is hereby allowed.

IA No. 330 of 2015

IA No. 330 of 2015 in DFR No. 1486 of 2015 has been moved by the applicant/appellant seeking condonation of delay of 45 days in filing this appeal. The Impugned Order was admittedly passed on *30th March, 2015* in Order No. 1 of 2015 in the matter of enhancement of additional surcharge payable by open access consumers for the control period 01.04.2015 to 30.09.2015. The respondent, Commission passed the Impugned Order without affording an opportunity of hearing to the affected parties, including the applicant/appellant. The Impugned Order was ex-party and was never communicated to the appellant. The appellant gained knowledge of the Impugned Order through some newspaper reports on or around 30th April, 2015 and on the same day he downloaded the Impugned Order from the website of the Commission. Some time was taken by the Legal

Department of the appellant in seeing the financial impact of the order on the appellant and then the appeal was filed on 29th July, 2015 with a delay of 45 days. The delay has properly and legally been explained by the appellant in the said application and there is cogent reason/ground to condone the delay. Apart from this the issue to be decided in this appeal is the impact of enhancement of additional surcharge payable by open access consumers for the aforesaid control period and whether the said enhancement of additional surcharge could be leviable by the State Commission.

Considering the aforesaid situation, we allow the Interlocutory Application No.330 of the 2015 and the said delay of 45 days in filing the appeal is hereby condoned and the appeal be treated as having been filed within the limitation period.

We have heard Mr.S.B.Upadhyay, senior counsel for the appellant. Admit. Mr.Manu Sharma, learned counsel for the respondent, State Commission and Ms.Ranjitha Ramachandran, learned counsel for the Respondent Nos. 2 & 3 are present today hence there is no need to issue notice to the respondents. A copy of the appeal memorandum be furnished to them. Reply/counter affidavit may be filed by the respondents within three weeks from today. Rejoinder, if any, may be filed by the appellant within two weeks thereafter.

Post the matter for hearing on **15th March, 2016.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

ss/sh