

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

**IA NOs. 544 & 545 OF 2016 IN
DFR NO. 2620 OF 2016**

Dated: 27th March, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:

Delhi Bar Association	Appellant(s)
Vs.		
Delhi Electricity Regulatory Commission & Anr.	Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Dewan

Counsel for the Respondent(s) : Mr. Anupam Verma
Mr. Rahul Kinra
Mr. Anurag Bansal for R-2/TPDDL

Mr. Divyanshu Rai
for Mr. Nikhil Nayyar for R-1/DERC

ORDER

**IA No. 544 of 2016
*(Applications for delay in re-filing)***

There is 38 days delay in re-filing this Appeal. In this application, the applicant/appellant has prayed that delay in re-filing may be condoned.

We have heard learned counsel for the appellant. For the reasons stated in the application, delay in re-filing the appeal is condoned. Application is disposed of.

**IA No. 545 of 2016
*(Application for delay in filing)***

In this appeal, tariff order dated 31.07.2013 passed by the Delhi Electricity Regulatory Commission ("**State Commission**") is challenged. According to the appellant, the appellant had filed a suit challenging the

tariff order. The appellant was prosecuting the suit and the learned Additional District Judge took a view that the Appeal against the tariff order lies in this Tribunal. That order was challenged before the Delhi High Court and the Delhi High Court confirmed the order of the Additional District Judge and directed the Appellant to file appeal in this Tribunal within two weeks and the appeal is filed within the prescribed time and therefore there is no delay. However, in the application it is stated that if the delay is calculated from the date of the original order, there may be delay and by way of abundant caution this application is filed for condonation of delay of 1064 days.

We have heard learned counsel for Respondent No.2.

We have carefully perused the application filed by the appellant and have also gone through the Order dated 24.05.2016 passed by the Delhi High Court. It appears that the appellant had challenged the tariff order and had filed a suit in the Court of Civil Judge, which took a view that the suit was not maintainable as the remedy of the Appellant lies in this Tribunal. That order was challenged in the Delhi High Court and the Delhi High Court affirmed the order of the Additional District Judge. It is necessary to quote the relevant portion of the Delhi High Court's order, which reads as under:

"2. The appellant had instituted the suit from which this appeal arises pleading i) that it is the largest and oldest Bar of Asia having more than 20,000 lawyers on its rolls; ii) that the land on which the chambers of the lawyers in the Tis Hazari Court Complex are build was given to the appellant/plaintiff on license basis; iii) that the members of the appellant/plaintiff constructed their chambers on the said land and applied to the erstwhile Delhi Electricity Supply Undertaking (DESU) for electricity meters and which were provided in the chambers and the electricity charges were being billed on domestic tariff; iv) that upon privatization of the distribution of electricity, the respondent Tata Power Delhi Distribution Ltd. was supplying the electricity to the said chambers; v) that the respondent/defendant vide letter dated 25th February, 2013 informed

the appellant/plaintiff that they were in the process of replacing the meters to shift to automated meter reading and assured that such change would not affect the status of the billing which till then was being done on domestic tariff; vi) that on the basis of aforesaid assurance, the meters were replaced, vii) that however the respondent/defendant thereafter unilaterally started billing the said meters at non-domestic tariff and to which the appellant/plaintiff protested; viii) that the said chambers are nothing but an extension of the residence of the advocates as the space therein is very small and used by the advocates only for giving consultation during court hours.

Accordingly, a decree for declaration that the letter dated 27th September, 2013 of the respondent/defendant demanding the tariff at non-domestic rates is null and void and a decree for permanent injunction restraining the respondent/defendant from disconnecting the electricity supply and a mandatory injunction to the respondent/defendant to charge for the electricity for the said meters at domestic tariff, were claimed.

3. The suit was entertained and vide interim order disconnection of any of the electricity meters was restrained subject to the members of the appellant/plaintiff continuing to pay the electricity charges at the domestic rates.

4. The learned ADJ by the impugned order has allowed the application of the respondent/defendant under Order VII Rule 11 of the CPC inter alia holding that for redressal of the grievance agitated in the plaint, the remedy of appeal before the Appellate Tribunal for Electricity (APTEL) under Section 111 of the Electricity Act had been made available and the same provided a complete code and the jurisdiction of the Civil Court was impliedly barred.

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7. The senior counsel for the appellant/plaintiff, in pursuance to the suggestion of this Bench, has advised the appellant and which advise has been accepted by the appellant/plaintiff, that the appellant/plaintiff approaches the Delhi Electricity Regulatory Commission (DERC)/APTEL for the relief as claimed in the suit with respect to the tariff. In this view of the matter, it is not deemed necessary to record the contentions of the senior counsel for the appellant/plaintiff and of the senior counsel for the respondent/defendant in this respect.”

Having regard to the submissions advanced, the Delhi High Court had passed the following order while confirming the order passed by the Additional District Judge:

“11. In this view of the matter, the appeal is disposed of in the following manner:

- (i) *The appellant/its members to within 60 days of today ensure that all amounts due at the domestic tariff are cleared and paid and no arrears at least at the rate of domestic tariff remain outstanding;*
- (ii) *The appellant/its members to on or before 31st July, 2016 approach the DERC/APTEL for the reliefs for which the suit aforesaid was filed and for any additional/other relief to which the appellant/its members may be entitled to;*
- (iii) *Till the decision/order of the DERC/APTEL, the electricity charges with respect to electricity meters installed in the lawyers' chambers at Tis Hazari Court Complex be paid at the domestic rate/tariff and subject to being so paid, the respondent/defendant shall not take any measures for disconnection of the electricity meters or otherwise for non-payment of the arrears since July, 2013 computed at non-domestic rate or of current charges till the decision/order of DERC/APTEL.”*

It appears that pursuant to this order, the present appeal is filed.

Having regard to the fact that the appellant had filed a suit and prosecuted the same *bona fide* and was ultimately relegated to this Tribunal, we are of the opinion that in the peculiar facts and circumstances of the case, the delay needs to be condoned after saddling the appellant with costs.

In the circumstances, we condone the delay on the condition that the appellant pays costs quantified at Rs.15,000/- to a charitable organisation, namely, “**National Association for the Blind, Delhi State Branch, Sector-5, R.K. Puram, New Delhi – 110 022**” within four weeks from today. Application is disposed of. Needless to say that this order is passed in the peculiar facts and circumstances of the case.

On payment of costs, the Registry is directed to number the appeal.

DFR NO. 2620 OF 2016

We have heard learned counsel for the parties.

The Delhi High Court had directed all the members of the appellant, who are occupying chambers and having electricity connections in the complex of Tis Hazari Court, that they should, in the meantime, pay the charges at domestic rates. Most of the lawyers appear to have been following the said order. However, learned counsel for Respondent No.2 has made a grievance that some of them have flouted this order. Counsel for the Appellant states that the bills are being raised at non-domestic tariff; but in terms of tariff order, however, Respondent No.2 will make some arrangement whereby members of the Appellant would be able to pay the bills at domestic rate, though the bills will be issued at a non-domestic rate. Respondent No.2 shall facilitate the members of the appellant to pay the tariff on domestic rate during the pendency of the appeal. We make it clear that this is only an interim arrangement. Whether the appellant has to pay the tariff at the commercial rate or domestic rate will be ultimately decided by this Tribunal at the final hearing of this appeal and this interim order will abide by the final order.

List the matter on **16.05.2017**.

(I.J. Kapoor)
Technical Member
ts/kt

(Justice Ranjana P. Desai)
Chairperson