

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

**IA Nos. 484 AND 485 OF 2016
IN
DFR No.2344 OF 2016**

Dated: 3rd November , 2016.

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

IN THE MATTER OF:

ULTRATECH CEMENT LIMITED)
A Company duly registered under the)
provisions of the Indian Companies Act)
having its registered office at B Wing, 2nd)
floor, Ahura Centre, Mahakali Caves Road,)
Andheri (East), Mumbai-400 093 and)
having one of its unit at Vikram Cement)
Works, Vikram Nagar, P.O.Khor, District)
Neemuch(M.P))... Applicant/
Appellant(s)

Versus

1. **MADHYA PRADESH ELECTRICITY**)
REGULATORY COMMISSION)
5th Floor, Metro Plaza,)
Arera Colony, Bittan Market,)
Bhopal – 462 016)
Madhya Pradesh)

2. **MADHYA PRADESH POWER)
TRANSMISSION COMPANY)
LIMITED.,)
Block No.2, Shakti Bhawan Rampur)
Jabalpur-482 008)
Madhya Pradesh)
Through its Chief Financial Officer) ... Respondents**

Counsel for the
Applicant(s)/Appellant (s) : Mr. Saurav Agrawal

Counsel for the Respondent(s) Mr.M.G. Ramachandran
Ms. Anushree Bardhan a/w
Ms. G. Maheshwari for **R-2**

ORDER

In this appeal the Appellant/Applicant has challenged impugned order dated 31/12/2012 passed by the Madhya Pradesh Electricity Regulatory Commission. There is 1232 days' delay in filing the appeal. Hence, IA No.485 of 2016 is filed praying that the said delay be condoned. There is 30 days' delay in re-filing the appeal. Hence in IA No.484 of 2016 the Applicant has prayed that the said delay be condoned. Following explanation is offered for delay in filing and re-filing the appeal.

- (a) The impugned order dated 31/12/2012 was passed by the Madhya Pradesh Electricity Regulatory Commission in Suo Moto Petition No.73 of 2012. The Applicant was not aware of the impugned order. The impugned order was not even communicated to the Applicant. The Applicant came to know about it only when demand notices were served on the Applicant on 22/3/2013 and 22/05/2013.
- (b) The Applicant came to know that several writ petitions have been filed against the impugned order before the Madhya Pradesh High Court. Therefore, on the basis of legal advice the Applicant filed writ petition in the Madhya Pradesh High Court on 31/08/2013. Since the Applicant is situated in a remote village of Madhya Pradesh, it took some time to file writ petition in the Madhya Pradesh High Court.
- (c) The Applicant's writ petition was disposed of by the Madhya Pradesh High Court on 23/05/2016. The Madhya Pradesh High Court granted liberty to the

Applicant to avail of statutory remedy of Appeal under Section 111 of 2003 Act (**“the said Act”**). Immediately thereafter, the Applicant contacted its lawyer in Delhi. The record of the case was obtained from Jabalpur and then transmitted to the counsel in Delhi. Due to the intervening vacation of the High Court meetings were held with the counsel in Delhi towards the end of June. Thereafter, after taking necessary steps the appeal was filed on 08/07/2016.

- (d) The appeal is filed within 45 days from the order dated 23/05/2016 passed by the Madhya Pradesh High Court giving liberty to the Applicant to file the appeal. The delay is not intentional or deliberate.
- (e) After the appeal was filed the Applicant's officers had to go to Delhi to affix the signature on the declaration and verification. This procedure took some time. It took about 30 days to cure the defects. Hence, there is 30 days' delay in re-filing the appeal.

2. We have heard Mr. Saurav Agrawal, learned counsel appearing for the Applicant. He reiterated above explanation. He submitted that delay is not intentional. The Applicant had filed writ petition in the Madhya Pradesh High Court and the Madhya Pradesh High Court granted liberty to the Applicant to file appeal under Section 111 of the said Act. Thereafter expeditious steps were taken by the Applicant to prepare appeal memo and file appeal within 45 days from the date of the Madhya Pradesh High Court's order. In the circumstances, the counsel prayed that the delay may be condoned.

3. The Respondents have been served. However, the Respondents have not filed any reply. In our opinion delay deserves to be condoned because it does not appear to be intentional. As rightly pointed out by the counsel the Applicant was prosecuting writ petition in the Madhya Pradesh High Court. The Madhya Pradesh High Court gave liberty to the Applicant to file appeal under Section 111 of the said Act in this Tribunal. The Applicant took steps to consult

lawyers and prepared the appeal memo and filed it within 45 days from 23/05/2016 on which date the Madhya Pradesh High Court had passed the order. In the circumstances it is not possible for us to say that the Applicant is guilty of any negligence or *mala fide* conduct. The Applicant's office is situated in a remote village of Madhya Pradesh. After filing the appeal the Applicant's officers had to come from Madhya Pradesh to cure the defects. Curing of defects was done in about 30 days. In our opinion the Applicant has offered acceptable explanation. In the circumstances, we condone the delay in filing and re-filing the appeal. Applications are disposed of.

4. Registry is directed to number the appeal and list the matter for admission on 08.11.2016. This appeal is directed to be tagged to Appeal No. 208 of 2016.

(I. J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

Mr/ts