

COURT-I

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

**IA NO. 506 of 2016 IN
DFR NO. 664 OF 2007**

&

**IA NO. 529 of 2016 IN
DFR NO. 720 OF 2007**

Dated: 23rd November, 2016

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

In the matter of:

Purvanchal Vidyut Vitran Nigam Ltd.

Vs.

M/s Jalan Concast Ltd. & Anr.

.... Appellant(s)

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Rakesh U. Upadhyay
Ms. Aarti Upadhyay

Counsel for the Respondent(s) : Ms. Swapna Seshadri for R-1

Mr. C.K.Rai
Mr. Umesh Prasad for R-2

ORDER

Since a number of old matters were pending in the Registry of this Tribunal, we directed the Registry to submit the details of the said matters. It then came to the notice of the Registry that in some of the old matters, counsel had not removed the defects. Thereafter, a direction was given to the Registry to list all the old matters before us, so that appropriate orders could be passed.

Both these appeals are of the year 2007. As per our direction, these appeals were listed before us on 01.06.2016. Nobody represented the Appellant. Therefore we adjourned them to 07.11.2016. Again on 07.11.2016 nobody appeared for the Appellant. On that day we observed that the Appellant appears to be not interested in prosecuting the matters and, therefore, dismissed the appeals for want of prosecution. Thereafter, the present applications have been filed for restoration of the appeals.

Since these are old matters of 2007 and there is every possibility of vested rights having been created, we issued notice to the respondents. Notice has been served and Respondent No.1 is represented through counsel.

We have heard learned counsel for the parties. Mr. Rakesh Upadhyay, learned counsel appearing for the Appellant submitted that these matters were entrusted to him only in 2014 and thereafter the defects were cured. When these matters were listed on 01.06.2016, he could not remain present since he was out of station. He stated that this was communicated by him to the office of this Tribunal. He submitted that the impugned order is without jurisdiction and therefore these appeals under DFR numbers may be restored.

We are not impressed by the submissions of Mr. Rakesh Upadhyay, learned counsel appearing for the Appellant. Learned counsel may be right that the appeals were entrusted to him in 2014, but the fact remains that the appeals were filed in the year 2007 and till 2014 i.e., for about seven years no steps were taken to cure the defects. We must mention here that as far back

as on 22.06.2007 the Registry of this Tribunal had issued defects notice to the then counsel for the Appellant. Therefore, the fact that the matters were under objection was communicated to the Appellant in the year 2007 itself. However, the defects were not cured. It is pertinent to note that after Mr. Rakesh Upadhyay entered appearance, defects notice was issued to the Appellant for the second time on 20.02.2014 requesting the Appellant to cure the defects within seven days. However, the Appellant took two months to cure the defects. Thereafter no anxiety was shown by the Appellant to have the matters listed before us. It is ultimately our direction which made the Registry place these matters before us.

The Appellant is guilty of total inaction. Besides, Ms. Seshadri, learned counsel for Respondent No.1 has submitted that Respondent No.1 has received the amounts as per the impugned order as far back as in the year 2007. Settled position cannot be unsettled by us at this distance of time. It is not possible for us to restore these appeals.

With the above observations, these applications are dismissed.

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

ts/kt