

Court-I

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

**IA No. 301 of 2015 in
DFR No. 1378 of 2015**

Dated : 19th October, 2015

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

In the matter of:-

M/s Maithon Power Ltd.

...Appellant(s)

Versus

**Jharkhand State Electricity Regulatory Commission
& Anr.**

...Respondent(s)

Counsel for the Appellant(s) :

Mr. Amit Kapur
Mr. Vishal Anand
Mr. Janmali Manikala

Counsel for the Respondent(s) :

Mr. Farrukh Rasheed for R.1

Ms. Anushree Bardhan
Mr. Shubham Arya for R.2

O R D E R

**IA No. 301 of 2015
*(Appl. for condonation of delay)***

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON

1. The Appellant M/s Maithon Power Limited has challenged Order dated 4.9.2014 passed by the Jharkhand State Electricity Commission (the State Commission). There is 257 days delay in

filing the appeal. In this application, the Appellant has prayed that the said delay be condoned. Affidavit of reply has been filed on behalf of Respondent No.2 Damodar Valley Corporation (DVC). Learned Counsel for DVC has strenuously opposed the application. She has relied on the order of this Tribunal in IA No.276 of 2014 in DFR No.1579 of 2014.

2. Learned counsel for the Appellant submitted that the delay is unintentional and deserves to be condoned. He drew our attention to the explanation offered in the application as to why the appeal could not be filed within the period of limitation. It appears from the said explanation that the Appellant which is a generating company supplies 300 MW power on round the clock basis to DVC under long term Power Purchase Agreement (PPA) dated 28.09.2006. By the impugned order dated 4.9.2014, the State Commission determined the ARR and retail supply tariff of DVC for financial year 2013-14 to financial year 2015-16. The State Commission disallowed actual power purchase from the generating units of the Appellant's project for financial year 2013-14 by about 15 MUs and the projected power purchase for financial year 2014-15 to 2015-16 by 7.23 MUs and 618 MUs

respectively. In view of this order, DVC issued letter dated 31.12.2014 to the Appellant seeking surrender of 150 MW of the total contracted capacity of 300 MW. It is only when the Appellant received this letter that it became aware of adverse financial impact of the State Commission's findings in the impugned order. In the said letter DVC stated as under:-

State Commission has disallowed around 50% of projected Power Purchase Cost from Applicant during period from FY 2014-15 & FY 2015-16. Further State Commission had not allowed DVC a part of the Power Purchase Cost from Applicant for the period 2013-14.

- a) The recovery of Fixed Charges is not possible from customers under command area of DVC as per directions of State Commission.*
- b) DVC has unallocated surplus power of 1200 MW from its new generating stations. DVC has not been able to tie-up for sale of aforementioned power under long-term bi-lateral agreement with any beneficiary resulting in significant backing down of its own generation.*
- c) In such circumstances, DVC Board has approved the surrendering of 50% of the contracted power of 300 MW i.e. 150 MW from Applicant.*

3. The Appellant then wrote a letter to DVC on 12.1.2015 pointing out the errors in the impugned order. The Appellant

also wrote letter dated 15.1.2015 to the State Commission seeking suitable amendment / rectification of the impugned order in view of the errors in the order. According to the Appellant, in the meantime it was engaged in discussion with DVC in order to amicably resolve the issue pertaining to the surrender of 150 MW of power. For this purpose, a Board meeting was held between the Directors of the Appellant and DVC. The Appellant's case is that it was under a bona fide belief that DVC would challenge the impugned order but since the DVC did not do so the Appellant filed the instant appeal on 3.7.2015. Time was also spent in trying to resolve the issue with DVC. Following is the gist of the explanation:-

a) **04.09.2014-31.12.2014** : *It is submitted that after the Impugned Order was issued, the Applicant was under the impression that DVC would challenge all the erroneous findings of the Impugned Order. However, the Applicant has become aware that DVC had not challenged the specific findings with respect to disallowance of Power Purchase Cost from Applicant after the Public Notice had been issued by DVC on 28.11.2014. Thereafter, DVC has issued letter; dated 31.12.2014 wherein it has intimated the Applicant that it sought to surrender 150 MW out of the total Contracted Capacity of 300 MW.*

- b) **01.01.2015-15.01.2015** : *The Appellant has analysed the Impugned Order and concluded that the State Commission had wrongly applied the Merit Order Dispatch Principle in contravention of Regulation 6.38 of the JSERC (Terms and Conditions for Determination of Distribution Tariff) Regulations, 2010 to curtail DVC's power purchase from the Appellant's Project. Thereafter, the Applicant has issued letter dated 12.01.2015 to DVC in response to the request to surrender the 150 MW of the total Contracted Capacity of 300 MW. On 15.01.2015, Applicant has issued a letter to State Commission seeking a rectification of the Impugned Order.*
- c) **16.01.2015-12.03.2015**: *The Applicant was engaged in negotiations with DVP to amicably resolve the issue pertaining to surrender of 150 MW by power by DVC. Thereafter, on 12.03.2015, the Applicant has filed its objections in Appeal No.255 of 2014 filed by DVC before this Hon'ble Tribunal on the basis of the Public Notice dated 28.11.2014 issued by DVC.*
- d) **12.03.2015-03.07.2015** : *The Applicant was engaged in negotiations with the DVC seeking to amicably resolve the issue regarding DVC's unilateral foreclosure of the PPA. The Applicant has held a board meeting with the directors of DVC to discuss the same. In the meantime, the Applicant has been advised that the filing of objections in Appeal No. 255 of 2014 would not be sufficient to protect its interests as it appeared that DVC would proceed to unilaterally foreclose the PPA. Accordingly, it has been decided that an Appeal be*

filed against the Impugned Order. Thereafter, the draft Appeal has been prepared and presented to Board of Directors who has deliberated on the issue and gave approval for the filing of Appeal. The present Appeal has been filed on 03.07.2015.

4. The above explanation appears to us to be acceptable. We do not find any intentional delay in filing the appeal. The delay can, therefore, be condoned by saddling the Appellant with costs. We may also note here that admittedly companion appeals have been admitted by this Tribunal. We may further note that order of this Tribunal on which Respondent No.2 has placed reliance has no application to this case. It turns on its own facts.

5. It was urged by learned counsel for Respondent No.2 that the appeal is not maintainable because the Appellant is not the aggrieved party. We are unable to accept this submission. It is the Appellant's case that the Appellant is aggrieved by the impugned order because of the following:-

a) State Commission has formulated the Merit Order Stack after considering both the Fixed Charges and Variable Charges in contrary to Regulation 6.38 of the JSERC (Terms and Conditions of

Distribution Tariff) Regulations, 2010 (“JSERC Distribution Tariff Regulations 2010”) which has resulted in :

- I. Disallowing of actual Power Purchase quantum of 31.89 Million Units (“MUs”) for FY 2013-14 from the Appellant by DVC and consequently Power Purchase Cost of Rs.14.76 Crores.*
- II. Disallowing of projected Power Purchase quantum of 1645.82 MUs and 1146.18 MUs for FY 2014-15 and FY 2015-16 respectively from the Appellant by DVC and consequently Power Purchase Cost of Rs.723.08 Crores and Rs.617.51 Crores respectively.*

(b) State Commission has excluded DVC’s own generating station while applying Merit Order Dispatch Principle and preparing the Merit Order Stack for approval of the Power Purchase Cost.

DVC has by its letter dated 31.12.2014 sought to surrender 150 MW of power out of the total contracted capacity of 300 MW.

It also needs to be noted that the primary reason for surrender of 150 MW of power by DVC is the impugned order. Letter dated 31.12.2014 annexed by Respondent No.2 to its affidavit in reply indicates that on account of the impugned order, Respondent No.2 sought to revise the PPA dated 28.09.2006 in terms of Clause D which contains provision for foreclosure of the PPA. Therefore, it cannot be said that the Appellant is not the

aggrieved person. The appeal is, therefore, perfectly maintainable.

6. In the circumstances, we condone the delay on a condition that the Appellant deposits a sum of Rs.10,000/- to “**National Association of Blind, Delhi State Branch, Sector-5, R.K. Puram, New Delhi-110022**” within two weeks i.e. on or before 29.10.2015. Needless to say that if the amount is not deposited, as directed the appeal shall stand dismissed.

7. Application is disposed of. After receiving the compliance report, the Registry is directed to number the appeal and list the matter for admission on **27/11/2015.**

8. Pronounced in the Open Court on this 19th day of October, 2015.

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]