

COURT-II

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

I.A. No. 276 of 2015 in DFR No. 725 of 2015

Dated: 29th September, 2015

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

In the matter of :

Jharkhand Urja Vikas Nigam Ltd. Appellant(s)
Versus	
Damodar Valley Corporation & Anr. Respondent(s)

Counsel for the Appellant/applicant (s) : Mr. Himanshu Shekhar

Counsel for the Respondent(s) : Ms. Anushree Bardhan &
Ms. Poorva Saigal for R-1

ORDER

Interlocutory Application No. 276 of 2015 has been moved on behalf of the applicant/appellant, namely, Jharkhand Urja Vikas Nigam Ltd., seeking condonation of delay in re-filing the Appeal. The main contention of the appellant's counsel is that the original Appeal was filed within time but due to some defects the Appeal was to be re-filed after removing the defects which took 91 days delay to cure the defects. Thus, there is 91 days delay in re-filing the Appeal.

Heard Mr. Himanshu Shekhar, learned counsel appearing for the applicant and Ms. Anushree Bardhan, learned counsel appearing for the main contesting respondent i.e. Damodar Valley Corporation.

We have perused the contents of the said I.A. and the facts mentioned in the accompanying affidavit. The main reasons causing the delay of 91 days in re-filing the Appeal are that the applicant/appellant is

situated in Ranchi, Jharkhand. After being notified the defects, the learned counsel for the appellant informed the same to the appellant at Ranchi. Thereafter, a Resolution of the applicant/appellant Company authorizing the person to file the Appeal was to be passed for which purpose, a Board Meeting was to be organized. For this purpose, the Board consisting of three persons including Director and Principal Secretary, Department of Finance, Government of India and Principal Secretary, Department of Energy, Government of India was required to be constituted. It took considerable time in holding the meeting for passing the Resolution as these Government officials were pre-occupied with other urgent and pressing works and the same resulted into delay in holding meeting for passing of the Resolution. Further reason assigned in the said Application is that the learned counsel for the applicant/appellant could not follow the matter with the appellant as he had gone to his native town during the summer vacation of the Courts. Thus, these grounds are being claimed as not deliberate but bona fide.

We have cautiously and carefully considered the grounds mentioned in the I.A. No. 276 of 2015. We do not find any sufficient ground to condone the delay of 91 days in re-filing the Appeal. If the appellant took 91 days in removing the defects, the fault lies on the part of the applicant's/appellant's own system for which this Tribunal cannot extend any help to it. If the applicant/appellant body takes such things in a very routine and casual way, no help can be given to such a negligent litigating party. Even on perusal of the grounds, as mentioned in the said IA which we have already cited above, cannot be said to be bona fide and legitimate ones.

We are very much conscious of our duty and responsibility that delay in the satisfying circumstances should be condoned. The applicant/appellant seeking condonation of delay in filing or re-filing the Appeal has to satisfy the Court that it had sufficient cause for not

preferring the same within the prescribed period. There should be sufficient and cogent reasons to justify the delay which, in the case in hand, is absolutely lacking. If some Board Meeting was again to be organized for passing a Resolution of the applicant/Appellant Company to re-file the Appeal after curing the defects, then the applicant should be conscious and careful to get the formalities completed without any delay and the same facts should have been brought to the notice of all the concerned who were the Constituting Members of the said Board. One ground, as mentioned in the said Application, is that as these Government officials were pre-occupied with other routine and pressing works. It means that there were other works on priority rather than passing a Resolution to authorize the applicant to re-file the Appeal within reasonable time. We understand that the Government machinery in such kind of matter runs at snail's pace but even then there should be some reasonableness and propriety in the system or procedure. If the appellant's counsel could not follow the matter with the appellant on account of the fact that he had gone to his native place in summer vacations of the Court, it was for the appellant to engage any other counsel in his place and re-file the Appeal.

We are of the considered view that there is no sufficient cause in re-filing the Appeal within the reasonable time. Each day's delay must be explained. There is no categorical explanation to 91 days delay in re-filing the Appeal. A perusal of the facts for deciding the point of delay in re-filing the Appeal makes it evident that the Appeal was originally filed within time. When certain defects were notified, then simply the defects were to be removed and even if some further Resolution was required to be passed for re-filing the Appeal, it was the outlook of the applicant/appellant. So far as we think, once the Appeal was filed in time and there were some defects, the said defects should have been cured/removed immediately for which there was no need of passing any

Resolution by some Board because the defects, if any notified, they were required to be removed without any condition.

Though, Ms. Anushree Bardhan, learned counsel for the O.P./respondent/DVC submits that delay condonation matters are always under the sole discretion of the concerned Court/Tribunal. Even if, there is no written objection from the side of opposite party/respondent/Damodar Valley Corporation, we do not find any sufficient grounds to condone the said delay. No Court/Tribunal is bound to allow the delay condonation application even if the same remains unopposed.

In these circumstances, I.A. No. 276 of 2015 for re-filing the Appeal is hereby dismissed as the reasons given therefor appear to be insufficient.

(T. Munikrishnaiah)
Technical Member
rkt/vg

(Justice Surendra Kumar)
Judicial Member