

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

**IA No. 401 of 2014 in  
DFR No. 1888 of 2014**

**Dated: 21<sup>st</sup> April, 2015**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. Nayan Mani Borah, Technical Member (P&NG)**

**In the matter of:-**

**NIKO RESOURCES LIMITED**

**HAVING ITS REGISTERED OFFICE AT:**

**1980, 700-4<sup>TH</sup> AVENUE,  
S.W. CALGARY ALBERTA,  
CANADA-T2P304**

**AND HAVING ITS PROJECT OFFICE AT:**

**"LANDMARK", 4<sup>TH</sup> FLOOR,  
RACE COURSE,  
VADODARA-390007,  
GUJARAT**

**...APPELLANT**

**AND**

**1. PETROLEUM AND NATURAL GAS REGULATORY BOARD,  
1<sup>ST</sup> FLOOR, WORLD TRADE CENTER,  
BABAR ROAD,  
NEW DELHI-110001**

**2. GUJARAT STATE PETRONET LIMITED,  
HAVING ITS REGISTERED OFFICE AT:  
GSPC BHAWAN, BEHIND UDYOG BHAWAN,  
SECTOR-11, GANDHINAGAR-382010**

**...RESPONDENT(S)**

Counsel for the Appellant(s) : Mr. Ramji Srinivasan, Sr. Adv.  
Mr. Abhas Kumar  
Ms. Divya Roy  
Mr. S. Bhatt  
Ms. Sara Sundaram  
Mr. Rishabh Kapur

Counsel for the Respondent(s) : Ms. Ranjana Roy Gawai,  
Ms. Sonali Malhotra  
Ms. Tushita for R-1

Mr. M.G. Ramachandran  
Mr. Piyush Joshi,  
Ms. Sumiti Yadava and  
Ms. Meghana Chandra for R-2

## **ORDER**

1. This is an application praying for condonation of 467 days delay in filing the present Appeal. This appeal is directed against the order passed by the Petroleum and Natural Gas Regulatory Board (PNGRB)/Respondent No.1 dated 19.03.2013 granting authorization to the Low Pressure Gujarat Gas Grid.

2. Niko Resources Limited is the Applicant/Appellant herein. The Gujarat State Petronet Limited (GSPL) is Respondent No.2.

3. We have heard the learned Senior Counsel appearing for the Applicant/Appellant as well as the learned Counsel appearing for Respondent No.1 and 2.

4. The gist of the explanation given through Application as well as oral submission by the Applicant/Appellant for the delay is as follows:

4.1 The Impugned Order was in response to an application made by Gujarat State Petronet Ltd. (GSPL), seeking authorization in respect of the Low Pressure Gujarat Gas Grid which included a 15 km (approx) long Hazira-Mora pipeline owned by a Joint Venture (JV) of the Applicant with Gujarat State Petroleum Corporation Limited (GSPC). The Respondent No.2, GSPL is a subsidiary of GSPC. The Applicant/Appellant was totally ignorant about the fact of GSPL forwarding the authorization application and the consequent Impugned Order at the time of its pronouncement

by Respondent No.1 (PNGRB). The ownership of the said pipeline is with the Joint Venture (JV) between the Applicant and GSPC. As per the Applicant, the Impugned Order was passed without granting it a legitimate opportunity of being heard despite the fact that it was a necessary and proper party in the proceedings.

4.2 The Applicant submits that it came to learn for the first time about the Impugned Order only vide an additional affidavit dated 04.06.2013 presented by GSPC as a part of arbitration proceedings. The Applicant states that the delay in filing the present appeal is purely on account of the lack of complete information and documents in regard to the proceedings before the PNGRB, the time taken in making various applications before various persons and authorities seeking such information and documents, the inability to get

any information or documents from any source and time taken in pursuing the recall applications before the PNGRB. Thus, the delay in filing the present appeal is not on account of any fault or deliberate action on the part of the applicant. Hence, the unintentional delay may be condoned.

5. The Application is vehemently opposed by the learned counsel for the Respondents. The contents of the objections are summarized as follows:

5.1 There is an inordinate and unexplained delay of 498 days in filing the present Appeal. The Applicant has failed to give sufficient or reasonable cause to explain this delay. The Applicant never challenged Respondent No.2's title over the Hazira-Mora pipeline and was fully aware of the construction, operation and maintenance of the said pipeline by Respondent No.2 since 1998.

Contrary to an incorrect allegation made by the Applicant, due public notice dated 20.06.2009 related to authorization application was served by PNGRB (Respondent No.1).

5.2 Further, the Applicant, vide a letter dated 06.10.2010 from Respondent No.2, came to know about the request sent to PNGRB for tariff fixation. Despite this knowledge, Applicant never filed an application before Respondent No.1 raising objection to Respondent No.2's request for fixation of tariff for the said pipeline.

5.3 In the light of the above facts, the inordinate delay may not be condoned.

6. The Applicant/Appellant, admittedly, pursued its efforts diligently to get access to certain information/documents in respect of the Hazira-Mora pipeline authorization application from

various sources which proved futile. The time taken in this prolonged exercise contributed, at least, in part, to the delay in filing the present Appeal. It is contended by learned counsel for the Respondents that the Applicant/Appellant had knowledge about the impugned order even prior to the presenting of the affidavit dated 04.06.2013 by GSPL as a part of arbitration proceedings. This question is indeed debatable. But in the circumstances of the case we are of the opinion that the matter needs to be heard on merits in the interest of justice. Assuming there is some inaction on the part of the Applicant/Appellant cause of justice should not be allowed to suffer on account of the same. However, looking to the length of delay we feel that appropriate cost should be imposed on the Applicant/Appellant.

In the circumstances we condone the delay in filing this appeal subject to the Applicant/Appellant paying cost of Rs. 1,00,000/- (1 lakh only).

7. The Applicant/Appellant is directed to pay the said cost of Rs.1,00,000/-(Rupees One Lakh only) as a donation to a Charitable Organisation namely, **"Tamanna, C-10/8, Vasant Vihar, New Delhi-110057, Tel No.26151572 (A voluntary registered Association for development of mentally disabled & Minimal brain damaged children)"** within two weeks from the date of this order.

8. This application for condonation of delay is allowed with the above condition.

9. The Registry is directed to verify the compliance of this order after two weeks and after such verification number the Appeal and post for admission on **7<sup>th</sup> May,2015.**

**(Nayan Mani Borah)**  
**Technical Member (P&NG)**

**(Justice Ranjana P. Desai)**  
**Chairperson**

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REPORTABLE/~~NON-REPORTABLE~~