IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

DFR NO. 32 OF 2024 & IA NO. 108 OF 2024 & IA NO. 110 OF 2024

Dated: 22nd August, 2024

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)

In the matter of:

1. WARDHA SOLAR (MAHARASHTRA) PVT. LTD.
Adani Corporate House
Shantigram, Near Vaishnodevi Circle,
S G Highway, Ahmedabad-382421, Gujarat ... Appellant No.1

2. PARAMPUJYA SOLAR ENERGY PVT. LTD.
Adani Corporate House
Shantigram, Near Vaishnodevi Circle,
S G Highway, Ahmedabad-382421, Gujarat ... Appellant No.2

3. MAHOBA SOLAR (UP) PVT. LTD.
Adani Corporate House
Shantigram, Near Vaishnodevi Circle,
S G Highway, Ahmedabad-382421, Gujarat ... Appellant No.3

4. SB ENERGY ONE PVT. LTD.
Adani Corporate House
Shantigram, Near Vaishnodevi Circle,
S G Highway, Ahmedabad-382421, Gujarat ... Appellant No.4

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION
Through its Secretary,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001. ... Respondent No.1

2. SOLAR ENERGY CORPORATION OF INDIA LTD.
Through its Chairman and Managing Director,
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi-110023. ... Respondent No.2

3. SOUTHERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LIMITED
Through its Managing Director,
Kesavayanagunta, Tiruchanoor Road, Tirupati,
Andhra Pradesh 517 501. ... Respondent No.3

4. EASTERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LIMITED
Through its Managing Director,
P & T Colony, Seetamma Dhara
Vishakhapatnam - 503 013. ... Respondent No.4

5. BANGALORE ELECTRICITY COMPANY LIMITED
Through its Managing Director,
Pardigm Plaza, A.B. Shetty Circle,
Pandeshwar, Mangalore - 575 001. ... Respondent No.5

6. MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED
Through its Managing Director,
Corporate Office, Krishna Rajendra Nagar,
Bangalore - 560 001. ... Respondent No.6

7. CHAMUNDESHWARI ELECTRICITY SUPPLY CORPORATION LIMITED
Through its Managing Director,
No. 29, CESC Corporate Office,
Hinkal, Vijaynagar, 2nd Stage,
Mysuru - 570 017. ... Respondent No.7

8. GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED
Through its Managing Director
Main Road, Gulbarga,
Karnataka – 585102. ... Respondent No.8

9. Hubli Electricity Supply Company Ltd,
Through its Managing Director,
PB Road, Navanagar, Hubbalii, Hubli,
Karnataka – 580025. ... Respondent No.9

10. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED
Through its Managing Director,
Hudco, Ekanth Nagar, N 11, Cidco,
Aurangabad, Maharashtra – 431003. ... Respondent No.10

11. CHHATTISGARH STATE POWER DISTRIBUTION COMPANY LIMITED
Through its Managing Director
Near Water Tank, Mowa Road,
Dubey Colony, Mowa, Raipur,
Chhattisgarh – 492001 ... Respondent No.11

12. HARYANA POWER PURCHASE CENTRE (HPPC)
Through its Managing Director,
Shakti Bhawan, Sector – 6
Panchkula -134 108. ... Respondent No.12

13. RAJASTHAN URJA VIKAS NIGAM LIMITED (RUVNL)
Through its Managing Director
Vidyut Bhawan, Janpath,
Jaipur-302005 ... Respondent No.13

14. JAIPUR VIDYUT VITRAN NIGAM LIMITED,
Through its Managing Director
Vidyut Bhawan, Jyoti Nagar,
Jaipur - 302005, Rajasthan ... Respondent No.14

15. AJMER VIDYUT VITRAN NIGAM LIMITED
Through Additional Chief Engineer (IT)
Vidyut Bhawan, Panchsheel Nagar Makarwali Road,
Ajmer - 305004, Rajasthan ... Respondent No.15

16. JODHPUR VIDYUT VITRAN NIGAM LIMITED,
Represented through Nodal officer,
Superintending Engineer (IT)
New Power House, Industrial Area,
Jodhpur - 342003, Rajasthan. ... Respondent No.16

17. UTTAR PRADESH POWER CORPORATION LIMITED,
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226001. ... Respondent No.17

18. JHARKHAND BIJLI VITRAN NIGAM LIMITED
Through its Managing Director
Engineers Building, Dhurwa, Ranchi,
Jharkhand. ... Respondent No.18

19. GRID CORPORATION OF ODISHA
Through its Managing Director

Janpath, Bhoi Nagar, Bhubaneswar,
Odisha - 751022 ... Respondent No.19

20. BSES YAMUNA POWER LIMITED
Through its Managing Director,
Shakti Kiran Building, Karkardooma,
New Delhi -11 0017 ... Respondent No.20

21. GUJARAT URJA VIKAS NIGAM LIMITED
Through its Managing Director
Sardar Patel Vidyut Bhawan,
Race Course Circle,
Vadodara – 390007. ... Respondent No.21

Counsel on record for the Appellant(s)	:	Poonam Verma Sengupta Saunak Kumar Rajguru Shubham Bhut Gayatri Aryan Sakshi Kapoor Rajesh Jha for App. 1 to 4
Counsel on record for the Respondent(s)	:	Anushree Bardhan Srishti Khindaria Surbhi Kapoor Aneesh Bajaj Shirsa Saraswati for Res.2 Shubhranshu padhi Niroop Sukrithy D. Girish Kumar Jay Nirupam Pranav Giri for Res.5 Shubhranshu Padhi for Res.6 Shubhranshu Padhi Niroop Sukrithy D. Girish Kumar for Res.7 Shubhranshu padhi Niroop Sukrithy for Res.8 Shubhranshu padhi Niroop Sukrithy D. Girish Kumar for Res.9

Udit Gupta
Anup Jain
Vyom Chaturvedi
Prachi Gupta
Pragya Gupta
Divya Hirawat
Nishtha Goel for Res.10

Ravi Sharma for Res.11

Anand K. Ganesan
Swapna Seshadri
Amal nair
Kritik Khanna
Shivani Verma for Res.13

Anand K. Ganesan
Swapna Seshadri
Amal Nair
Kritika Khanna
Shivani Verma for Res.14

Anand K. Ganesan
Swapna Seshadri
Amal Nair
Kritika Khanna
Shivani Verma for Res.15

Anand K. Ganesan
Swapna Seshadri
Amal Nair
Kritika Khanna
Shivani Verma for Res.16

ORDER

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

IA NO. 108 OF 2024

(Application for condonation of delay in filing the appeal)

IA-108 of 2024 is filed by the Applicant-Appellant seeking condonation of the delay of 836 days in filing the appeal. The present appeal, in DFR No.

32 of 2024, is filed against the order passed by the CERC in Petition No.536/MP/2020 dated 20.08.2021. Petition No.536/MP/2020 was filed by Solar Energy Corporation of India Ltd ("SECI" for short) requesting the CERC to approve the annuity-based methodology for payment of Change in Law compensation, and for a direction to the buying discoms to comply with said order and forthwith pay the reconciled amounts to SECI on annuity/ lump sum basis along with the applicable Late Payment Surcharge ("LPS").

By the impugned order dated 20.08.2021, the CERC determined the annuity rate at 10.42% per annum which, according to the Applicant-Appellant, ignores the equity component, and thereby results in contravention of the CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2017. While the impugned order was passed by the CERC on 28.08.2021, the present appeal was filed on 18.01.2024 with a delay of 836 days.

As elaborate submissions were put forth and several judgements were relied upon by Sri Amit Kapur, Learned Counsel for the Appellant, Sri M.G. Ramachandran, Learned Senior Counsel for the Respondent-SECI, and Mrs. Swapna Seshadri, Learned Counsel for the Respondent-Discoms, it is convenient to consider the rival contentions and the judgements relied upon in this regard, under different heads.

I. DOES THE EXPLANATION FURNISHED JUSTIFY CONDONATION OF DELAY:

A. COVID-19 PANDEMIC:

It is submitted, on behalf of the Applicant-Appellant, that, among the reasons for the inordinate delay in filing the appeal, is the widespread impact of the COVID-19 pandemic on public health, and the adversities

faced by litigants in the prevailing conditions, which resulted in the Supreme Court passing the order in *" In Re: Cognizance for Extension of Limitation, (2022) 3 SCC 117"* holding that the period from 15.03.2020 till 28.02.2022 should be excluded from computation of the limitation period in respect of all kinds of proceedings before all judicial/quasi-judicial forums.

On the other hand, it is stated, on behalf of the Respondent-SECI, that there is neither any valid justification nor has sufficient cause been shown for this delay in filing the appeal under Section 111 of the Electricity Act, 2003; the delay is not of a short duration but is for a period of 836 days; even if the period covered by the order of the Supreme Court, in relation to the Covid-19 pandemic, were to be excluded, the delay would nonetheless be of nearly two years ie of 687 days; there is lack of bonafides on the part of the Appellants-Applicants; and they have not been diligent in availing their appellate remedy.

ANALYSIS:

In the present case, the delay in filing the appeal is of 836 days. From this, the period from 20.08.2021 till 28.02.2022 is required to be excluded in view of the judgment of the Supreme Court in **Re Cognizance for extension of limitation: (2022) 3 SCC 117.** By the said judgement, the Supreme Court directed that, in view of the Covid-19 pandemic, the period of limitation, stipulated in various enactments, would stand extended, and Courts/Tribunals, governed by Statutes, should exclude this period while computing the limitation period. We must, therefore, exclude the period from 20.08.2021 till 28.02.2022, and compute the delay in filing the appeal only from 01.03.2022 onwards. The delay, even if computed from 01.03.2022 till 18.01.2024, is of 687 days ie a delay of nearly two years.

B. GRADUAL REALISATION OF THE ACTUAL IMPACT OF PAYMENT OF ANNUITY RATE:

i. APPELLANTS CONTENTIONS:

It is submitted, on behalf of the Applicant-Appellant, that the present IA is filed seeking condonation of delay of 834 days in filing the present Appeal which in effect is 687 days of delay; while the Impugned Order was passed on 20.08.2021, the actual impact of change in law payment at an annuity rate of 10.41% p. a on the recovery of cost of capital, by the Solar Power Developers, and the actual level of inadequacy of the Change in Law restitution at the rate of 10.41 % p.a. was realized only over course of time since: (a) servicing of capital cost i.e. servicing of loans, securities or bonds, *(in case of debt)* as well as servicing of the equity held by shareholders *(in case of equity)* takes place on long term basis; and (b) only after servicing the capital cost on such long-term basis *(based on Change in Law payments received at the annuity rate of 10.41% p.a.),* the Applicants realized that such annuity rate failed to ensure adequate restitution.

ii. CONTENTION OF RESPONDENT-SECI:

It is submitted, on behalf of Respondent-SECI, that the Appellant's contention, that it is only after servicing the capital cost in FY 2022-2023 at the annuity rate of 10.41% could they ascertain the insufficiency, is not tenable; while the impugned order was passed on 20.08.2021 (FY 2021-2022), the Appeal was filed on 18.01.2024 (FY 2023-2024); the CERC has, by the impugned order, determined the annuity terms and conditions for compensating Solar Power Developers for impact of the Change in Law; the said order is a common order applicable to 34 Solar Power Developers and 19 Buying Entities, qua power procurement on a back to back basis; the reasoning given by the Appellant, a commercial entity involved in the power sector, that it could not understand the financial implication is

misplaced for reasons that (a) the annuity rate at 10.41%, its method of computing, the non-consideration of rate of return on equity (post tax) etc. were fully deliberated in the impugned order at various places, and the financial implications were well known; (b) after the order dated 20.08.2021, SECI and the Appellant had deliberated on the payments to be made, and the same was settled; the Appellant accepted payments as per the annuity rate of 10.41% and did not raise the issue till the filing of the Appeal on 18.01.2024; even otherwise, these events took place long after the limitation period of 45 days, specified under Section 111 of the Electricity Act, 2003, had expired; the cause, shown by the Appellant-applicant, does not suffice to condone the inordinate delay as the events referred to by the appellants took place long after the period of limitation had expired; and it is clear that the Appellants had no intention earlier to challenge the impugned Order.

iii. CONTENTION OF RAJASTHAN DISCOMS:

It is submitted, on behalf of the Rajasthan Discoms, that the application is bereft of reasons except for the period between 15.03.2020 to 28.02.2022 which is required to be excluded due to the Supreme Court' order in *In Re: Cognizance for Extension of Limitation* [(2022) 3 SCC 117]; from 01.03.2022, 2 years were allegedly taken by the Applicant-Appellant to assess the impact rate of annuity at 10.41% not being adequate; even excluding the period from 04.10.2021 (45 days limitation) to 28.02.2022 there is a delay of 687 days without any sufficient cause; the expression 'sufficient cause' may not be a strict rule but surely cannot cover the inability to understand the impact of the directions, especially since the proceedings before the CERC were to find out the impact of carrying cost to yield a discounting factor for the payment of change in law claims on an annuity basis; as is clear from the impugned Order, multiple generators had raised

this issue of annuity rate not being adequate; and the Applicant was fully aware of its options with regard to the rate before the CERC itself.

It is further submitted, on behalf of the Rajasthan Discoms, that the generators, claiming change in law in various petitions, arrayed SECI as well as the ultimate distribution licensees as parties; the petition, involving detailed pleadings as well as arguments of all parties, was heard by the CERC on 06.08.2020 and 22.04.2021; a reading of the impugned Order indicates that the annuity rate formed the subject matter of major discussions; for any generator to contend that it had to wait for around two years to assess the impact of the rate is unacceptable; the proceedings by NSEFI in Appeal No. 492 of 2023 also clearly shows that the present appeal is an afterthought, and a change of position, on the part of the Applicant after having accepted the decision of the CERC to fix the rate at 10.41%.

It is also submitted, on behalf of the Rajasthan Discoms, that one set of appellants, belonging to the ACME Group of Companies. have questioned the impugned Order on the same basis by filing Appeal No. 492 of 2023, and had also moved I.A. No. 2115 of 2021 seeking exemption from impleading other developers; v*ide* order dated 18.05.2023, the I.A was allowed granting them exemption from impleading other respondents including the Applicant; on 01.09.2023, the National Solar Energy Federation of India-NSEFI, of which the Applicant is a member, filed I.A. No. 1966 of 2023 seeking that they be impleaded in Appeal No. 492 of 2023; the I.A was contested by RUVITL and others; to avoid the issue of impleadment, NSEFI filed another I.A, being I.A. No. 2451 of 2023, seeking intervention in Appeal No. 492 of 2023; *Vide* order dated 16.01.2024, the intervention application came to be dismissed; on 18.01.2024, the present appeal was filed as an afterthought; and the Applicant has chosen to accept the impugned Order, and has now preferred the present Appeal after

accepting payments from the distribution companies over a period of 2 years in terms of the impugned order.

iv. ANALYSIS:

In view of the judgement of the Supreme Court in **Re Cognizance for extension of limitation: (2022) 3 SCC 117,** the period from 21.08.2021 (when the impugned order was passed) till 28.02.2022 is required to be excluded in computing the period of delay in filing the present Appeal. Let us now examine the cause which the Appellant has shown, in the application seeking condonation of delay in invoking the appellate jurisdiction of this Tribunal from 01.03.2022 till 18.01.2024 on which date the present appeal was instituted. All that is stated, for the delay relating to this period, is that the Appellant realized gradually, over the course of the succeeding year, the actual impact of the change in law payment at an annuity rate of 10.41 percent on the recovery of cost of capital by the Solar Power Developers; servicing of the equity held by the shareholders takes place on a yearly basis, and it is only after the closure of the relevant financial year, and on computing financial estimates qua that year, that the applicant realized that such annuity rate failed to ensure adequate restitution.

The Solar Energy Corporation of India Limited ("SECI" for short) had filed a Petition, under Section 79(1) of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, for clarification and modification of the GST/ Safeguard Duty Orders, and for issuance of directions to the Buying utilities/ Distribution Utilities for immediate payment and application of the orders commonly to all similarly placed project developers and Buying Utilities/ Distribution Companies. The Solar Power Generators, including the Appellants, were parties to the said proceedings. The very same

contentions, as are stated to be the reasons for the delay in filing the present appeal, were in fact urged before the CERC.

Among the contentions, urged before the CERC, was that the proposed annuity rate at 10.41% could not be made applicable, as 10.41% could be applied only for the debt part (70%) of the additional cost incurred; 10.41% was not/ could not be applied on the equity part (30%) of the additional capex; the debt-equity ratio was 70:30 and the post-tax return on equity (RoE) allowed was 14% (pre-tax RoE would be 18.71%, if grossed up with the current effective tax rate at the rate of 25.17%); resultantly, RoE for the Respondent-SPDs should be 18.71% (pre-tax), ie return on 30% value of the project cost at 18.71% (pre-tax); therefore, the effective discounting factor of 12.9% needed to be considered, and the proposed annuity rate of 10.41% could not be made applicable for the entire 100% of additional capex incurred; and the effective discounting factor of 12.9% needed to be considered in terms of the 2017 RE Tariff Regulations.

In the impugned order, the CERC considered two options: (1) payment of the entire principal amount as a lump sum amount, together with the applicable Late Payment Surcharge (LPS) in terms of the PPA, and (2) payment of the entire principal amount through equated monthly Installments (EMIs), spread over a pre-determined period of time, starting from the COD. With respect to the applicable annuity rate for calculating EMIs, the Commission, after taking note of the submissions urged on behalf of the SPDs, concluded by holding that the discounted rate of annuity payment should be 10.41% towards expenditure incurred by SPDs on account of Change in Law (GST Laws or Safeguard Duty, as the case may be); the liability of SECI/ Discoms for 'Monthly Annuity Payments' starts from the 60th (sixtieth) day from the date of the order, or from the date of

submission of claims by the SPDs, whichever was later; and the tenure of Annuity Payments should be for 13 years.

It is not as if the Appellant had become aware much later of the financial loss they would incur as a result of the impugned order, ie only after the end of FY 2022-23, since the very same issue was agitated before the CERC by the SPDs and was elaborately considered and adjudicated by the Commission in the impugned order. Since appeals filed by a few other SPDs are pending on the file of this Tribunal, we may not be justified in expressing any opinion on the correctness or otherwise of the conclusions arrived at by the CERC in the impugned order at this stage, that too in an application filed seeking condonation of delay. We have referred to the contents of the impugned order passed by the CERC only to show that the Appellant's claim, to be unaware of the consequences of the impugned order passed by the CERC till 31.03.2023, is wholly unjustified.

Computing the delay from 01.03.2022, the 2022-23 financial year, which the appellant refers to, expired more than a year thereafter on 31.03.2023. As the very same issue was the subject matter of the impugned order which was passed after parties on all sides were heard at length and their submissions were considered, the explanation furnished for this period from 01.03.2022 to 31.03.2023 would not constitute sufficient cause to condone the delay. Accepting this explanation as sufficient cause for condoning the delay, would render the stipulation of 45 days, as the period of limitation for filing an appeal, in Section 111(2) of the Electricity Act, 2003 redundant, as such a justification can be put forth in each and every case of delay in availing the appellate remedy.

Even if we were to accept what the Appellant has stated as the reason for their failure to invoke the appellate jurisdiction of this Tribunal within time,

FY 2022-23 came to an end on 31.03.2023. Even if the delay were to be computed from 01.04.2023 (which, in the absence of any valid explanation, we will have difficulty in doing), there is still no explanation whatsoever for the inordinate delay of more than 9½ months (293 days to be precise) thereafter in invoking the appellate jurisdiction of this Tribunal, till the appeal was eventually filed on 18.01.2024.

In this context, it is relevant to note that the National Solar Energy Federation of India ("NSEFI" for short), of which the Applicant is a member, filed I.A. No. 1966 of 2023 on 01.09.2023 praying that they be impleaded in Appeal No. 492 of 2023. This I.A was contested by RUVITL and others. Without pressing the issue of impleadment, NSEFI filed I.A. No. 2451 of 2023, seeking intervention in Appeal No. 492 of 2023. In IA No. 2451 of 2023, the NSEFI contended that, while nine of its 17 Members had already preferred Appeals, the other eight were now seeking to intervene in Appeal No. 492 of 2023 filed by a few other Solar Developers. In the order passed in the said Appeal, this Tribunal observed that the change in law claim raised in the said appeal arose on the PPA entered into between the Solar Power Generators and the purchasing entities; it was only the parties to the said proceedings who had a grievance with the order passed by the CERC; while nine of the 34 generators had filed appeals within time, the remaining 25 had chosen not to do so, meaning thereby that they had chosen to comply with the orders of the CERC; and, since the twin tests of Order 1 Rule 8 CPC were not satisfied, the application filed by the Federation for intervention was liable to be dismissed.

Nothing prevented the Applicant-Appellant from at least filing an appeal by 01.09.2023 when the NSEFI had filed the IA for impleadment. It is evidently because the intervention application filed later by the Federation, on behalf of the Appellant and others, was rejected that the

Appellant has then filed the present appeal along with an application seeking condonation of the delay.

Even otherwise, the Appellant and several other Solar Power Developers have been receiving monthly annuity payment, in compliance with the order of the CERC, for the past more than two and a half years at the discounted rate of annuity payment of 10.41%. Permitting the Appellant to now agitate this issue on merits, after condoning the inordinate and unexplained delay in filing the appeal from 01.03.2022 till 18.01.2024 i.e. for a period of nearly two years, would not only open the floodgates with the other several SPDs, which have chosen to receive monthly annuity payment from the CERC, to now, belatedly and three years after the impugned order was passed by the CERC, to invoke the appellate jurisdiction of this Tribunal, but may also result in consumers' interest being adversely affected if such unduly belated Appeals are entertained and the claims raised therein are examined on its merits.

II. CIRCUMSTANCES IN WHICH COURTS CAN EXERCISE DISCRETION TO CONDONE THE DELAY:

A. MERITORIOUS CLAIM:

It is submitted, on behalf of the Applicant-Appellant, that their claims in the appeal is meritorious in nature; while exercising its discretion, courts ought not to refuse to condone the delay where such refusal can result in a meritorious matter being thrown out at the very threshold, and the cause of justice being defeated, even if there is some lapse on the part of the Applicants (**Collector, Land Acquisition, Anantnag & Anr. Vs. Ms. Katiji & Ors. (1987) 2 SCC 107; Raheem Shah & Anr. v Govind Singh & Ors. 2023 SCC OnLine SC 910; State of Bihar vs. Kameshwar Prasad Singh, (2000) 9 SCC 94; M.K. Prasad v. P. Arumugam, (2001) 6 SCC 176; State of Nagaland v. Lipok Ao, (2005) 3 SCC 752**); and procedural technicalities

are not a bar to substantive rights of parties. (**Sk. Salim Haji Abdul Khayumsab v. Kumar, (2006) 1 SCC 46; Union of India vs. Madras Bar Assn., (2010) 11 SCC 1; Sushil Kumar Sen vs. State of Bihar, (1975) 1 SCC 774.**

It is further submitted, on behalf of the Applicants-Appellants, that, by the Impugned Order, the CERC held that: - (a) the CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2017 ("***RE Tariff Regulations***") only had a reference value for the purpose of determining the annuity rate; (b) it was appropriate to use the normative rate of interest for debt i.e. 10.41% p.a. as the annuity rate; and (c) the SPDs' claim to consider Pre-tax rates of debt and equity components was inconsistent with the methodology followed by the CERC i.e., Post-tax basis; the Impugned Order is erroneous since: - (a) the CERC erred in pegging the annuity rate at 10.41% p.a. by considering only normative interest rate (debt component), not covering normative equity component; (b) this contradicted Regulation 13 of the RE Tariff Regulations which mandated that Debt:Equity ratio of 70:30 be considered (in terms of **PTC India Ltd. v. CERC & Ors., (2010) 4 SCC 603**; (c) Annuity rate determined at 10.41% p.a. does not restitute the Applicants to the same economic position as if the Change in Law event had not occurred, and this violates the principles of restitution expounded in **Energy Watchdog & Ors. vs. CERC & Ors.** (2017) 14 SCC 80; (d) upon considering the Debt: Equity ratio of 70:30 (*per* Regulation 13 *of CERC RE Tariff Regulations*) and Return on Equity (RoE) on Pre-Tax basis (*per* Regulation 16(2) *of CERC RE Tariff Regulations*), the annuity rate works out to 13.84% p.a**.**

B. JUDGEMENTS RELIED UNDER THIS HEAD:

i. JUDGEMENT CITED BY THE APPELLANT

1. COLLECTOR (LA) V. KATIJI, (1987) 2 SCC 107:

In **Collector (LA) v. Katiji, (1987) 2 SCC 107,** the appeal, preferred by the State of Jammu & Kashmir against the decision enhancing compensation, in respect of acquisition of lands for a public purpose, to the extent of nearly 14 lakhs Rupees by making an upward revision of the order by 800 per cent (from Rs 1000 per kanal to Rs 8000 per kanal) which also raised important questions as regards principles of valuation, was dismissed, by the Jammu & Kashmir High Court as time barred being 4 days beyond time, by rejecting an application for condonation of delay. Aggrieved thereby the Collector preferred an appeal to the Supreme Court.

It is in this context that the Supreme Court observed that the legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act; an appeal may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period, in order to enable Courts to do substantial justice to parties by disposing of matters on "*merits*"; the expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts; a liberal approach is adopted on principle as it is realized that: (*1*) Ordinarily a litigant does not stand to benefit by lodging an appeal late; (*2*) Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. (3) "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied

in a rational common sense pragmatic manner; (4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay; (*5*) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk; and (*6*) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so; making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal; the fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant; experience showed that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve; in any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status; the courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause"; so also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits; and they were satisfied that sufficient cause existed for the delay. The order of the High Court, dismissing the appeal before it as time-barred, was therefore set aside, and the delay was condoned.

2. RAHEEM SHAH V. GOVIND SINGH, 2023 SCC ONLINE SC 910:

In **Raheem Shah v. Govind Singh, 2023 SCC OnLine SC 910,** the first respondent was the plaintiff in the original suit which was decreed by the trial court. The appellants, who were defendants No. 1 and 2 in the suit, filed a regular First Appeal under Section 96 of the Civil Procedure Code assailing the said judgment. Since there was a delay of 52 days in filing the appeal, an application under Section 5 of the Limitation Act was filed seeking condonation of delay. The lower Appellate Court dismissed the appeal on the ground of limitation holding that the delay had not been properly explained. The Second Appeal was dismissed by the Madhya Pradesh High Court holding that there was no question of law for consideration.

It is in this context that the Supreme Court, relying on **Collector, Land Acquisition, Anantnag v. Mst. Katiji, (1987) 2 SCC 107,** observed that the contention in the appeal before the lower Appellate Court was that the judgment was not in the knowledge of the appellants; that aspect of the matter was required to be kept in view by the lower Appellate Court since the appellants in fact had not taken effective part except filing written statement; when there was a delay of only 52 days in filing the appeal, and furthermore when the parties were litigating with regard to the right over immovable properties, the substantial rights were to be decided between the parties; the delay could have been condoned and the appeal could have been decided on merits; if only the court concerned had been sensitive to the justice oriented approach rather than the iron-cast technical approach, the litigation between the parties would have probably come to an end much earlier after a decision on the merits of their rival contentions; the very manner in which the lower Appellate Court had dismissed the appeal on the ground of delay, when the delay was not inordinate, was not justified; and

the High Court was also not justified in dismissing the appeal only on the ground that there was no question of law.

3. STATE OF BIHAR V. KAMESHWAR PRASAD SINGH, (2000) 9 SCC 94:

In **State of Bihar v. Kameshwar Prasad Singh, (2000) 9 SCC 94,** the delay in filing the SLP was of 679 days. In the application seeking condonation of delay in filing the SLP, it was submitted on behalf of the appellant that the order of the Division Bench of the Patna High Court could not be challenged earlier allegedly due to the fear of contempt and various coercive orders passed by the High Court against the State and its officials; consequent upon the judgment of the High Court, a number of writ petitions had been filed in the Patna High Court for the grant of similar benefits; the State had no option left except to approach the Supreme Court; the impugned judgment was passed in violation of the provisions of law and the applicable rules; it had played havoc in the Department, and the Government was facing great trouble in complying with such type of directions for conferment of uncalled-for benefits; if the impugned judgment was not rectified or set aside, the interests of more than 250 officers would be adversely affected; by promoting Brij Bihari Prasad Singh, a number of senior officers had already been superseded for no fault of theirs; if promotions are given in terms of the directions of the High Court, the same is likely to upset the entire cadre of Deputy SPs of Police as well as Inspectors of Police in the State of Bihar; and, If not stopped, the consequence would be uncalled-for litigation with heavy financial burden upon the State.

The interveners before the High Court had also filed an application seeking condonation of delay mainly on the ground of not being aware of

the judgment passed by the High Court which ultimately and eventually adversely affected their interests.

It is in this context that the Supreme Court, relying among others, on its earlier judgement, in ***Collector, Land Acquisition* v. *Katiji*** **[(1987) 2 SCC 107,** observed that the power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits; looking into the facts and circumstances of the case, and with the object of doing substantial justice to all the parties concerned, they were of the opinion that sufficient cause had been made out by the petitioners which had persuaded them to condone the delay in filing the petitions; dismissing the appeals on technical grounds of limitation would not, in any way, advance the interests of justice but would, admittedly, result in failure of justice as the impugned judgments were likely to affect not only the parties before them, but hundreds of other persons who were stated to be senior than the respondents; technicalities of law could not prevent them from doing substantial justice and undoing the illegalities perpetuated on the basis of the impugned judgments; however, while deciding the petitions, the reliefs in the case can be appropriately moulded which may not amount to unsettling the settled rights of parties on the basis of judicial pronouncements made by Courts regarding which the State is shown to have been careless and negligent; it was the paramount consideration of this Court to safeguard the interests of all the litigants, and persons serving the Police Department of the State of Bihar, by ensuring the security of their tenure and non-disturbance of accrual of rights upon them under the prevalent law and the rules made in that behalf. Accordingly delay in filing the petitions was condoned.

4. M.K. PRASAD V. P. ARUMUGAM, (2001) 6 SCC 176:

In **M.K. Prasad v. P. Arumugam, (2001) 6 SCC 176,** unaware of the passing of the decree against him, the appellant could not take any proceeding in the form of an appeal or for setting it aside. He came to know about the passing of the decree in 1997 only when he received the notice for execution proceedings initiated by the respondent in Execution Petition No. 118 of 1997. The appellant thereafter filed an application for setting aside the ex parte decree along with an application for condoning the delay. The trial court rejected the prayer of the appellant for condoning the delay of 554 days in filing the application for setting aside the ex parte decree. Aggrieved by the order of the trial court, the appellant filed a revision petition in the High Court which was dismissed vide the order impugned in the appeal before the Supreme Court.

It is in this context that the Supreme Court observed that, in a case in which a decree is passed ex parte, the defendant can apply to the court by which the decree was passed for an order to set it aside and, if he satisfies the court that he was prevented by sufficient cause from appearing when the suit was called for hearing, the court shall make an order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit; such an application can be filed within 30 days as provided under Article 123 of the Limitation Act; in case of delay, the defendant can avail of the benefit of Section 5 of the Limitation Act and seek its condonation by satisfying the court regarding the existence of circumstances which prevented him from approaching the court within the limitation prescribed by the statute; in construing Section 5 of the Limitation Act, the court has to keep in mind that discretion in the Section has to be exercised to advance substantial justice; and the court has a discretion to condone or refuse to condone the delay as is evident from the words “may be admitted” used in the Section.

After referring to **Ramlal v. Rewa Coalfields Ltd:** AIR 1962 SC 361, **State of W.B. v. Administrator, Howrah Municipality: (1972) 1 SCC 366, G. Ramegowda, Major v. Special Land Acquisition Officer [(1988) 2 SCC 142, *N. Balakrishnan* v. *M. Krishnamurthy*: (1998) 7 SCC 123,** the Supreme Court, in **M.K. Prasad**, observed that, in the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. The inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case, the impugned order was set aside and the delay in filing the application, for setting aside the ex parte decree, was condoned.

5. STATE OF NAGALAND V. LIPOK AO, (2005) 3 SCC 752:

In **State of Nagaland v. Lipok Ao, (2005) 3 SCC 752,** the State of Nagaland questioned the correctness of the judgment rendered by a learned Single Judge of the Gauhati High Court, Kohima Bench refusing to condone the delay of 57 days by rejecting the application filed under Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”) and consequently rejecting the application for grant of leave to appeal.

An application for grant of leave was made in terms of Section 378(3) of the Code of Criminal Procedure, 1973 (in short “the Code”). A judgment of acquittal was passed by the learned Additional Deputy Commissioner (Judicial), Dimapur, Nagaland. As there was delay in making the application for grant of leave in terms of Section 378(3) of the Code, an application for condonation of delay was filed. As is revealed from the application for condonation, copy of the order was received by the department concerned on 15-1-2003; without wasting any time on the same date the relevant documents and papers were put up for necessary action before the Deputy Inspector General of Police (Headquarters), Nagaland. On the next day, the said Deputy Inspector General considered the matter and forwarded the file for consideration to the Deputy Inspector General of Police (M&P), Nagaland. Unfortunately the whole file along with the note-sheet was found missing from the office and could not be traced in spite of best efforts made by the department. Finally it was traced on 15-3-2003 and the file was put up for necessary action by the Additional Director General of Police (Headquarters), Nagaland. The said officer opined that an appeal was to be filed on 26-3-2003, and finally the appeal was filed after appointing a Special Public Prosecutor. When it was noticed that no appeal had been filed, the Secretary to the Department of Law and Justice, Government of Nagaland got in touch with the Additional Advocate General, Gauhati High Court regarding the filing of the appeal and in fact the appeal was filed on 14-5-2003. In the application for condonation of delay it was clearly noted that when directions were given to reconstruct the file, the missing file suddenly appeared in the office of the Director General of Police, Nagaland.

In support of the application for condonation of delay, it was submitted that the aspects highlighted clearly indicated that the authorities were acting bona fide. The High Court, however, refused to condone the delay of 57

days on the ground that it was the duty of the litigant to file an appeal before expiry of the limitation period. Merely because the Additional Advocate General did not file an appeal in spite of the instructions issued to him, that did not constitute sufficient cause and further the fact that the records were purportedly missing was not a valid ground. It was noted that merely asking the Additional Advocate General to file an appeal was not sufficient and the department should have pursued the matter and should have made enquiries as to whether the appeal had in fact, been filed or not. Accordingly the application for condonation of delay in filing the appeal was rejected and consequentially the application for grant of leave was rejected.

Relying on **New India Insurance Co. Ltd. v. Shanti Misra: (1975) 2 SCC 840, Shakuntala Devi Jain v. Kuntal Kumari: AIR 1969 SC 575, Concord of India Insurance Co. Ltd. v. Nirmala Devi:(1979) 4 SCC 365, Lala Mata Din v. A. Narayanan: (1969) 2 SCC 770, State of Kerala v. E.K. Kuriyipe: 1981 Supp SCC 72, Milavi Devi v. Dina Nath [(1982) 3 SCC 366,O.P. Kathpalia v. Lakhmir Singh: (1984) 4 SCC 66, Collector, Land Acquisition v. Katiji, (1987) 2 SCC 107, and G. Ramegowda v. Spl. Land Acquisition Officer: (1988) 2 SCC 142,** the Supreme Court, in **Lipok Ao**, observed that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay — intentional or otherwise — is a routine; considerable delay of procedural red tape in the process of their making decision was a common feature; therefore, certain amount of latitude is not impermissible; if the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest; the expression “sufficient cause” should, therefore, be considered with pragmatism in a justice-oriented approach rather than the

technical detection of sufficient cause for explaining every day's delay; the factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process, and the court should decide the matters on merits unless the case is hopelessly without merit; when the factual background is considered in the light of legal principles as noted above, the inevitable conclusion is that the delay of 57 days deserved condonation.

6. SK. SALIM HAJI ABDUL KHAYUMSAB V. KUMAR, (2006) 1 SCC 46:

The challenge in the appeals before the Supreme Court, in **Sk. Salim Haji Abdul Khayumsab v. Kumar, (2006) 1 SCC 46**, was to the judgment rendered by a learned Single Judge of the Bombay High Court in WP Nos. 2500 and 2501 of 2004. The writ petitions filed by the appellants were dismissed by the learned Single Judge holding that the trial court was right in its view that there was no scope for granting extension of time beyond the period of 90 days to file the written statement, in view of the amendment to the Code of Civil Procedure, 1908 (in short “CPC”) by the Civil Procedure Code (Amendment) Act, 1999.

In a suit for partition, separate possession and perpetual injunction the appellants were arrayed as Defendants 15 and 1. The suit was filed by Respondent 1. The appellants were summoned under Order 5 Rules 1 and 5 CPC on 21-10-2003. They sought time to file the written statement and by order dated 29-10-2003 the trial court granted time till 17-11-2003. On the said date another application was filed for extension of time to file the written statement. Time was allowed till 19-2-2004. As 19-2-2004 was a holiday the written statement was filed on 20-2-2004. The trial court refused to accept the written statement on the ground that the written statement was

filed beyond the period of 90 days. The appellants filed writ petitions before the Bombay High Court, Aurangabad Bench. The High Court dismissed the writ petitions on the ground that there was no scope for granting time to file written statement beyond the prescribed period of 90 days.

It is in this context that the Supreme Court held that Order 8 Rule 1 CPC was procedural. It is not a part of the substantive law. All the rules of procedure were the handmaid of justice, and to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. No person has a vested right in any course of procedure. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Processual law is not a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

In **Union of India v. Madras Bar Assn., (2010) 11 SCC,** the Supreme Court held that all litigation in courts get inevitably delayed which leads to frustration and dissatisfaction among litigants. In view of the huge pendency, courts are not able to bestow attention and give priority to cases arising under special legislations. Therefore, there is a need to transfer some selected areas of litigation dealt with by traditional courts to special tribunals. As tribunals are free from the shackles of procedural laws and

evidence law, they can provide easy access to speedy justice in a “cost affordable” and “user friendly” manner.

In **Sushil Kumar Sen v. State of Bihar, (1975) 1 SCC 774,** the Supreme Court held that the processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice, compels consideration of vesting a residuary power in Judges to act ex debito justiciae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence — processual, as much as substantive. It is too puritanical for a legal system to sacrifice the end product of equity and good conscience at the altar of processual punctiliousness and it is not too radical to avert a breakdown of obvious justice by bending sharply, if need be, the prescriptions of procedure. The wages of procedural sin should never be the death of rights.

C. ANALYSIS:

The Applicant-Appellant’s contention, of their claim being meritorious, is based on the 2017 CERC RE Tariff Regulations and the observations in the judgements of the Supreme Court on which they have relied upon. The contention, based on the 2017 CERC RE Tariff Regulations, could have been urged by filing an appeal within the period of limitation, and does not constitute a valid justification for the inordinate delay in filing the present appeal.

In so far as the judgements, on which the Applicants-Appellants place reliance upon, are concerned, it is useful to note that in **Collector (LA) v. Katiji, (1987) 2 SCC 107,** the application which was dismissed, by the Jammu & Kashmir High Court, was for condonation of delay of 4 days. In **Raheem Shah v. Govind Singh, 2023 SCC OnLine SC 910,** the

appellants, who were defendants No. 1 and 2 in the suit, filed a regular First Appeal under Section 96 of the Civil Procedure Code, along with an application for condonation of the delay of 52 days in filing the said appeal. In **State of Nagaland v. Lipok Ao, (2005) 3 SCC 752,** the appeal before the Supreme Court was filed by the State of Nagaland against the judgment of the Kohima Bench of the Gauhati High Court, refusing to condone the delay of 57 days. In **Sk. Salim Haji Abdul Khayumsab v. Kumar, (2006) 1 SCC 46**, the trial court had refused to accept the written statement filed on 20.2.2004 as the time granted by them had expired on 19-2-2004, and it was filed one day beyond the period of 90 days, though 19-2-2004 was a holiday.

As held by the Supreme Court, in **Vedabai vs Shantaram Babu Rao Patil: (2001) 9 SCC 106,** in exercising discretion under Section 5 of the Limitation Act, Courts should draw a distinction between a case where the delay is inordinate and a case where the delay is short; in cases where the delay is considerable, the case calls for a more cautious approach, but cases where the delay is short deserve a liberal approach. The Appellant cannot compare its case where the delay, even after excluding the covid-19 pandemic period, is of 687 days with cases where the delay is of less than 100 days. Reliance placed by them, on the afore-said judgements, is of no avail. Accepting their submission that, irrespective of the extent of delay, the Court should examine whether the claim has merit would defeat the very purpose for which a period of limitation for filing an appeal has been statutorily prescribed, and would require the Court, even if the unexplained delay is of a few decades, to consider the claim on merits. Such a far-fetched submission does not merit acceptance.

It is true that, in **State of Bihar v. Kameshwar Prasad Singh, (2000) 9 SCC 94,** the delay in filing the SLP was of 679 days, and in **M.K. Prasad**

v. P. Arumugam, (2001) 6 SCC 176 the appellant had filed an application for setting aside the ex parte decree along with an application for condoning the delay of 554 days. In both the afore-said cases, the Supreme Court was satisfied that the cause shown for condonation of the delay was sufficient.

In **Commr., Nagar Parishad, Bhilwara v. Labour Court: (2009) 3 SCC 525,** and in **MOOLCHANDRA VS UNION OF INDIA: (2024) SCC OnLine SC 1878**, the Supreme Court observed that, while deciding an application for condonation of delay, the Court ought not to go into the merits of the case and should only see whether sufficient cause had been shown by the appellant for condoning the delay in filing the appeal before it.

As long as the Court is satisfied that the cause shown for the delay in filing the appeal is sufficient, the length of the delay in invoking the appellate jurisdiction may not, by itself, be fatal. Unlike in the afore-said two judgements, ie in **Kameshwar Prasad Singh** and **M.K. Prasad**, the cause shown for the inordinate delay in filing the present appeal is wholly insufficient. The inordinate and unexplained delay of 687 days in filing the present appeal, does not justify its condonation.

The observations of the Supreme Court, in **Union of India v. Madras Bar Assn., (2010) 11 SCC,** that, as tribunals are free from the shackles of procedural laws and evidence law, they can provide easy access to speedy justice, and in **Sushil Kumar Sen v. State of Bihar, (1975) 1 SCC 774,** that the humanist rule that procedure should be the handmaid, not the mistress, of legal justice should be adopted, cannot be read out of context to contend that, irrespective of its length, the delay should invariably be condoned.

As it is difficult for us to accept the applicant-appellant's claim of having to wait till 31.03.2023 to understand the effect and consequences of the impugned order, when the entire issue was discussed threadbare in the impugned order, and as there is no explanation whatsoever for the delay thereafter (ie after 31.03.2023), till the present appeal was filed on 18.01.2024, the application, seeking condonation of delay, necessitates rejection.

III. NO PREJUDICE WOULD BE CAUSED TO THE RESPONDENTS:

a. APPELLANTS CONTENTIONS:

In support of their contention that they would suffer grave prejudice in the event delay is not condoned by this Tribunal, they would also be deprived of an opportunity of being heard, and to present their case on merits, and no prejudice will be caused to Respondents if the delay is condoned, the Applicant-Appellant submits that, recognizing the delay in filing and accepting equities that have arisen, they had sought the grant of restitutive level of annuity effective from the date of filing of the present Appeal; as such (a) no prejudice will be caused to the Respondents if the present Applicants were also allowed to contest the Impugned Order on merits; (b) ACME Appeal on identical questions of law is already pending; (c) SECI has relied upon **Pathapati Subba Reddy (Died) by LRs & Ors. vs. Special Deputy Collector (LA) 2024 SCC OnLine SC 513** ***[2J]*** to oppose the present Application; however, on the very same date i.e., 08.04.2024, in **K.B. Lal vs. Gyanendra Pratap & Ors. 2024 SCC OnLine SC 508**, the Supreme Court *inter alia* held that (a) deserving and meritorious cases should not be dismissed solely on the ground of delay and (b) no presumption can be attached to deliberate causation of delay; the present case is meritorious, and no presumption of *malafide* should be attached;

and (d) in **Shri Mallikarjun Devasthan Shelgi vs. Subhash Mallikarjun Birajdar & Ors. 2024 SCC OnLine SC 646,** the Supreme Court condoned the delay of over 17 years and held that the High Court therein had adopted a hyper-technical approach by attaching so much importance to the delay in question as much did not turn upon the same.

b. CONTENTIONS OF RESPONDENT-SECI:

On the other hand, it is submitted, on behalf of the Respondent-SECI, that the expression *"sufficient cause",* employed in Section 5 of the Limitation Act, 1963 and similar statutes, is elastic enough to enable Courts to apply the law in a meaningful manner which would sub-serve the ends of justice; although no hard and fast rule can be laid down in dealing with applications for condonation of delay, Courts have justifiably advocated adoption of a liberal approach in condoning the delay of short duration, and a stricter approach where the delay is inordinate (**Collector, Land Acquisition, Anantnag -v- Mst. Katiji (1987) 2 SCC 107; N. Balakrishnan -v- M. Krishnamurthy (1998) 7 SCC 123; and Vedabai -v- Shantaram Baburao Patil (2001) 9 SCC 106**); there is neither any valid justification nor has sufficient cause been shown for this inordinate and unexplained delay in filing the appeal under Section 111 of the Electricity Act, 2003; and the delay is not of a short duration but is for a period of 687 days even if the period during the Covid-19 pandemic were to be excluded.

It is further stated, on behalf of the Respondent-SECI, that there is lack of bonafides on the part of the Appellants-Applicants; they have not been diligent in availing their appellate remedy; and, if the inordinate delay in filing the present appeal were to be condoned, the very purpose for which a time limit is specified, for filing the appeal under Section 111(2) of the Electricity Act, 2003, will become redundant and purposeless. Reliance is

placed on behalf of the Respondents on **Ramlal Motilal -v- Rewa Coalfields Limited AIR 1962 SC 361; Balwant Singh -v- Jagdish Singh & Ors. (2010) 8 SCC 685; Brijesh Kumar & Others -v- State of Haryana (2014) 11 SCC 351;** and **Basawaraj and Ors -v- The Spl. Land Acquisition Officer (2013) 14 SCC 81.**

It is also submitted, on behalf of Respondent-SECI, that the claim made by the Appellant in the Appeal is an afterthought; in any event there has been gross negligence in filing the appeal belatedly after a period of 687 days; the decisions of the Supreme Court in **Pathapati Subba Reddy (died) by L.R.s and others -v- Special Duty Collector (LA), 2024 SCCOnline SC 513, Basawaraj and others -v- Special Land Acquisition officer, 2013 14 SCC 81** and **Ram Lal, Motilal and Chhotelal -v- Rewa Coalfields Limited, AIR 1962 SC 361,** lay down the principles in regard to condonation of delay to be considered under Section 5 of Limitation Act, 1963 namely, establishing sufficient cause is a pre-condition failing which the application needs to be rejected; the present case involves inordinate delay of 687 days and it is not a case of delay of less than 100 or 150 days where sufficient cause could possibly be considered in a liberal manner i.e. when some cause is established, the discretion of the Courts can be exercised to condone the delay by imposing costs; in the present case, SECI as well as the buying utilities have organised their affairs; out of the total period of 13 years, sufficient number of years have already expired and the explanation given for the delay in filing of the Appeal is vague to even be considered as sufficient cause; the case cited by the Appellant(s) during the hearing ie **K.B Lal vs Gyanendra Pratap and Others: 2024 SCC Online SC 508** is in fact in favour of the arguments put forth by SECI, wherein also, due to lack of satisfactory/reasonable ground, the Supreme Court rejected the prayer for condoning the delay; and the other decision

relied on by the Appellant(s) - **Shri Mallikarjun Devasthan, Shelgi -v- Subhash Mallikarjun Birajdar and others, 2024 SCC Online SC 646** is on a change report before Charity Commissioner under the Maharashtra Public Trusts Act, 1950 and is not related to a proceeding in court and is otherwise distinguishable.

c. CONTENTION OF RAJASTHAN DISCOMS:

It is submitted, on behalf of the Rajasthan Discoms, that the judgments cited by the Applicant i.e., **K.B. Lal (Krishna Bahadur Lal)** v. **Gyanendra Pratap & Ors**. [(2024) SCC OnLine SC 508. and **Shri Mallikarjun Devasthan, Shelgi** v. **Subhash Mallikarjun Birajdar & Ors**. [(2024) SCC OnLine SC 646, do not lay down any principle of law with regard to condonation of delay; to the contrary, the Supreme Court in **Basawaraj & Ors**. v. **Special Land Acquisition Officer**: (2013) 14 SCC 81. has held that, if a party has simply remained inactive or negligent, no court could be justified in condoning the delay while imposing conditions; therefore, the offer of the Applicant to forego interest for the period of delay in approaching this Tribunal or imposing any cost in violation of the statutory provisions would not be the correct position; this principle has been followed in several other judgments i.e., **U.P. Jal Nigam & Anr**. v. **Jaswant Singh & Anr:** (2006) 11 SCC 464] and **Pathapati Subba Reddy (Died) by L.Rs. and Ors**. v. **Special Deputy Collector (LA)**: (2024) SCC OnLine SC 513).

D. JUDGEMENTS RELIED ON UNDER THIS HEAD:

i. Pathapati Subba Reddy v. LAO, 2024 SCC OnLine SC 513:

In **Pathapati Subba Reddy v. LAO, 2024 SCC OnLine SC 513,** the Supreme Court held that, on a harmonious consideration of the provisions of the law, it is evident that (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy

rather than the right itself; (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time; (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally; (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act; (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence; (vi) Merely because some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal; (vii) Merits of the case are not required to be considered in condoning the delay; and (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for reason that the conditions have been imposed, tantamount to disregarding the statutory provision.

In **Pathapati Subba Reddy v. LAO, 2024 SCC OnLine SC 513,** the Supreme Court observed that the decisions in **Dhiraj Singh (Dead) through Legal Representatives v. State of Haryana,** and **Imrat Lal v. Land Acquisition Collector,** would not cut any ice as imposition of conditions are not warranted when sufficient cause has not been shown for condoning the delay; secondly, delay is not liable to be condoned merely because some persons have been granted relief on the facts of their own

case; condonation of delay in such circumstances is in violation of the legislative intent or the express provision of the statute; condoning the delay, without holding that they had made out a case for condoning the delay is not a correct approach, particularly when both the above decisions have been rendered in ignorance of the earlier pronouncement in the case of **Basawaraj** (supra); the claimants were negligent in pursuing the reference and then in filing the proposed appeal; secondly, most of the claimants had accepted the decision of the reference court; and there was apparently no due diligence on their part in pursuing the matter.

ii. K.B. LAL V. GYANENDRA PRATAP, 2024 SCC ONLINE SC 508:

The question which fell for consideration, in **K.B. Lal v. Gyanendra Pratap, 2024 SCC OnLine SC 508,** was whether an application filed by the appellant, under Order IX Rule 7 CPC can be allowed, after a delay of almost 14 years, and whether there was sufficient cause for filing such a belated application? Order IX Rule 7 CPC relates to the procedure where the defendant appears on the date of adjourned hearing and assigns good cause for previous non-appearance. The said provision stipulates that, where the Court has adjourned the hearing of the Suit ex-parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the Suit as if he had appeared on the day fixed for his appearance.

It is in this context that the Supreme Court held that, although the term ‘sufficient cause’ has not been defined in the Limitation Act, the term has to be construed liberally and in order to meet the ends of justice; the reason for giving the term a wide and comprehensive meaning is to ensure that deserving and meritorious cases are not dismissed solely on the ground of

delay; the discretionary power of a court to condone the delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on the part of the litigant (**Majji Sannemma @ Sanyasirao v. Reddy Sridevi, (2021) 18 SCC 384**); the discretion is also not supposed to be exercised in the absence of any reasonable, satisfactory or appropriate explanation for the delay (**P.K. Ramachandran v. State of Kerala, (1997) 7 SCC 556**); the words 'sufficient cause' in Section 5 of the Limitation Act can only be given a liberal construction, when no negligence, nor inaction, nor want of bona fide is imputable to the litigant (**Basawaraj v. Special Land Acquisition Officer., (2013) 14 SCC 81**); and, as held in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649,** no presumption can be attached to deliberate causation of delay, but gross negligence on the part of the counsel or litigant is to be taken note of.

The Supreme Court found no satisfactory or reasonable ground given by the appellant explaining the delay; first, it was an admitted position by the appellant himself that, upon inspection of the case filed in the year 2011, he came to know about the order dated 06.09.2006, by which the Trial Court had decided to proceed ex-parte against him; what prevented the appellant from filing the application under Order IX Rule 7 that year itself had not been satisfactorily explained, as the first application was only filed in the year 2017; secondly, the explanation offered by the appellant, which is that the advocate appointed by him did not pursue the matter diligently, and then another advocate was appointed by him who inadvertently forgot to file the application, did not find support from the records; and what was clear was that the appellant had been grossly negligent in pursuing the matter before the trial court. The appeal was, therefore, dismissed.

iii. Shri Mallikarjun Devasthan v. Subhash Mallikarjun Birajdar, 2024 SCC OnLine SC 646:

Acceptance of the Change Reports in relation to the Vahiwatdar (Administrator) and Trustees of Shri Mallikarjun Devasthan, Shelgi, a Public Trust, was in issue in **Shri Mallikarjun Devasthan v. Subhash Mallikarjun Birajdar, 2024 SCC OnLine SC 646.** The Appeals, filed before the Supreme Court, were preferred against the judgement of the Bombay High Court invalidating such acceptance and in remanding the matters to the Deputy Charity Commissioner for his consideration afresh.

A Change Report was required to be submitted under the Bombay Public Trusts Act within the stipulated 90 days but Sri Jagdishchandra, the brother of the deceased Vahiwatdar, did so, long thereafter, on 21.10.2015. He also filed a delay condonation application therewith, stating that he did not file the Change Report earlier by mistake as he was not aware about it. His report was taken on file as Change Report No. 899 of 2015. Judgment dated 15.03.2016 was passed therein by the Deputy Charity Commissioner, Solapur. Thereby, the Change Report was held to be legal and valid, taking note of the fact that no one had taken an objection thereto. In consequence, Schedule 1, pertaining to the Trust, was directed to be amended after expiry of the appeal period. However, no appeal was filed against this judgment within such period. Thereafter, Jagdishchandra appointed four other persons as Trustees, by co-opting them on 28.03.2017. He filed Change Report No. 1177 of 2017 to record their names in the register maintained under Section 17.

While so five persons, all of them Birajdars, claiming to be the devotees of Shri Mallikarjun Temple at Shelgi filed an application under Section 70A before the Joint Charity Commissioner against the judgment dated 15.03.2016 passed by the Deputy Charity Commissioner, Solapur,

accepting Change Report No. 899 of 2015. The same was taken on file as Revision Application No. 61 of 2017. Therein, these five devotees questioned the eligibility of Jagdishchandra to be the Vahiwatdar of the subject Trust, alleging that he had 'unlawfully' filed the Change Report No. 899 of 2015 and obtained approval'. They further alleged that the Deputy Charity Commissioner had not made a proper inquiry on the Change Report. They, however, did not make the delay on his part a ground of challenge. Jagdishchandra filed an application in the revision pointing out that he had filed a delay condonation application in relation to the filing of Change Report No. 899 of 2015. By order dated 29.01.2019, the Joint Charity Commissioner, Pune, held that the Change Report had been accepted, which meant that the delay stood condoned, and it was not necessary to call for a finding on the delay condonation application.

Thereafter, the Joint Charity Commissioner, Pune, dismissed Revision Application No. 61 of 2017 filed by the five devotees, *vide* judgment dated 09.07.2019. As regards Change Report No. 1177 of 2017 pertaining to the co-option of four Trustees by Jagdishchandra, the Assistant Charity Commissioner, Solapur, delivered judgment dated 18.04.2018. Therein, while noting that some of the devotees of the Temple had filed objections to the said report, he ultimately held that the Change Report was legal and acceptable. Aggrieved by this judgment, two of the devotees filed Appeal No. 79 of 2018 before the Joint Charity Commissioner, Pune, under Section 70. The said appeal was dismissed by the Joint Charity Commissioner, Pune, *vide* judgment dated 09.07.2019.

Assailing dismissal of their Revision Application No. 61 of 2017 *vide* judgment dated 09.07.2019, confirming the judgment dated 15.03.2016 passed by the learned Deputy Charity Commissioner, Solapur,

in respect of Change Report No. 899 of 2015, the five devotees filed W.P. No. 8570 of 2019 before the Bombay High Court. Therein, for the very first time, they raised the ground of delay of more than 17 years on the part of Jagdishchandra in filing a Change Report after the death of Ashok Mallikarjun Patil on 16.02.1997.Challenging the dismissal of their Appeal No. 79 of 2018, *vide* judgment dated 09.07.2019 passed by the Joint Charity Commissioner, Pune, confirming the judgment dated 18.04.2018 passed by the Assistant Charity Commissioner, Solapur, in respect of Change Report No. 1177 of 2017, the two devotees filed W.P. No. 8571 of 2019 before the Bombay High Court. By common judgment dated 27.08.2019, the Bombay High Court allowed both the writ petitions. The point that weighed with the learned Judge was that there was no separate order passed by the Deputy Charity Commissioner, Solapur, condoning the delay of over 17 years in the filing of the first Change Report, and this was contrary to Section 22 of the Bombay Public Trusts Act; acceptance of Jagdishchandra as the Vahiwatdar under Change Report No. 899 of 2015 could not be sustained and, in consequence, his Change Report No. 1177 of 2017 could also not be sustained. It is on this sole ground that the learned Judge restored the proceedings in relation to both the Change Reports to the file and directed the Deputy Charity Commissioner, Solapur, to decide them afresh. The learned Judge further directed that the position existing as on that date should be maintained, i.e., Jagdischandra and his nominated Trustees, who were administering the Trust, were permitted to continue to administer the Trust in accordance with law.

It is in this context that the Supreme Court held that no provision existed, regarding filing an application to condone the delay, at the time Change Report No. 899 of 2015 was submitted by Jagdishchandra, despite which he had filed a delay condonation application praying for condonation

of the delay on his part in filing the report; it is not mandatory that a written application be filed seeking condonation of delay and relief can be granted in that regard even upon an oral request, provided sufficient cause is shown for such delay (**Bhagmal v. Kunwar Lal and Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd.;** the *proviso* added in Section 22(1) in the year 2017 was merely clarificatory in nature; even in the absence thereof, the wording of Section 22(1) of the Act of 1950, as it stood earlier, did not negate the applicability of Section 29(2) of the Limitation Act, 1963, and in consequence, Section 5 of the Limitation Act, 1963, could be invoked for condonation of the delay in the submission of a Change Report; the High Court did not call for the original file to verify whether the Deputy Charity Commissioner, Solapur, had passed a separate order on the delay condonation application, condoning the delay in exercise of such power; in any event, the Joint Charity Commissioner, Pune proceeded on the understanding that the delay had already been condoned; he passed an order to that effect on 29.01.2019, and that order was never challenged by the applicants in Revision Application No. 61 of 2017 by the Birajdar family; and, once that order attained finality, it was not open to them to ignore the same and reopen the issue of delay before the High Court, all the more so, when the issue of delay was never raised by them in Revision Application No. 61 of 2017 and was raised for the very first time only in the writ petition filed against the judgment passed therein.

The Supreme Court then considered the consequence of a Change Report being submitted belatedly, and observed that, even in the event a new Vahiwatdar takes over a Trust, and he fails to submit a Change Report within the stipulated period of 90 days, the provisions of the Act do not contemplate automatic invalidation of his assumption of office as the

Vahiwatdar of the Trust in such a situation; once a Trust is registered as a Public Trust under Section 18 of the Act, it becomes the statutory duty of the authorities concerned to maintain proper records in relation to such Trust, including the particulars of its Administrators and Trustees; the Change Report has to be filed before the authorities concerned to facilitate timely updating of records after hearing all the parties concerned, as the statute provides for objections being raised against a Change Report; delay or failure in doing so would mean that the records would not stand updated promptly; objectors to the changes in the Trust, if any, can always take recourse to the remedies provided under the Act, complaining of the failure or delay in the filing of a Change Report and the adverse consequences of such changes, if any; as per the statutory scheme, failure to file Change Reports would invite penal consequences under Section 66, which provides that whoever contravenes Section 22 and fails to report a change would be liable to pay a fine of Rs. 10,000/-; continued failure to do so may invite more adverse consequences, as provided in the Act, but such consequences would flow from the orders passed by the authorities concerned under the relevant provisions and would not stem from such failure automatically; when failure to file a Change Report would not be fatal in itself, the delay in filing a Change Report cannot automatically impact the assumption of office by a Vahiwatdar of a Trust; the very fact that a *proviso* was added in Section 22(1) of the Act of 1950, enabling the authority concerned to condone the delay in the filing of the Change Report, if sufficient cause is made out, clearly indicates that such delay is curable and the delay in filing a Change Report would not, by itself, entail non-acceptance or nullification of the changes in the Trust which are sought to be informed to the authorities with delay; in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy,** it was observed that there should be a liberal, pragmatic, justice-

oriented, non-pedantic approach while dealing with an application for condonation of delay as Courts are not supposed to legalize injustice but are obliged to remove injustice; the devotees, all bearing the same family name ‘Birajdar’, who were raising objections seemed to have a grievance with the very registration of the subject Trust, but their revision in that regard stood dismissed and appeared to have attained finality; after such dismissal, in the capacity of being devotees of the Temple, they can have no legitimate grievance with regard to the succession to the post of Vahiwatdar of the subject Trust, more so, when the eldest male member in the founder's family had no issue with it.

The Supreme Court concluded holding that the Bombay High Court had adopted a rather hyper-technical approach by attaching so much importance to the delay in the submission of the first Change Report; much did not turn upon the same as it was a curable defect; in any event, it had no impact on the change that had been brought about in the subject Trust but which was informed to the authorities belatedly. In consequence, acceptance of Change Report Nos. 899 of 2015 and 1177 of 2017 was confirmed.

It was mainly because the order of the Joint Charity Commissioner, Pune dated 29.01.2019, holding that the delay had already been condoned, had attained finality as it was not challenged in revision; the defect was curable and the delay in filing a Change Report did not entail non-acceptance or nullification of the changes in the Trust, which were sought to be informed to the authorities with delay, that the Supreme Court, in **Shri Mallikarjun Devasthan v. Subhash Mallikarjun Birajdar, 2024 SCC OnLine SC 646,** set aside the order of the Bombay High Court.

Unlike in **Shri Mallikarjun Devasthan,** Section 111(2) of the Electricity Act prescribes a period of limitation of 45 days in filing the appeal, and the proviso thereto enables the delay in filing the appeal to be condoned only on sufficient cause being shown. Reliance placed by the Appellants on **Shri Mallikarjun Devasthan v. Subhash Mallikarjun Birajdar, 2024 SCC OnLine SC 646,** is therefore misplaced

iv. N.BALAKRISHNAN VS M.KRISHNAMURTHY: (1998) 7 SCC 123:

In **N.Balakrishnan vs M.Krishnamurthy: (1998) 7 SCC 123,** a suit for declaration of title and ancillary reliefs filed by the respondent was decreed ex parte on 28-10-1991. The appellant, who was the defendant in the suit, on coming to know of the decree, moved an application to set it aside. But the application was dismissed for default on 17-2-1993. The appellant moved for having that order set aside only on 19-8-1995 for which a delay of 883 days was noted. The appellant also filed another application to condone the delay by offering an explanation that he had engaged an advocate for making the motion to set the ex parte decree aside but the advocate failed to inform him that the application was dismissed for default on 17-2-1993; when he got a summons from the execution side on 5-7-1995, he approached his advocate but he was told that perhaps execution proceedings would have been taken by the decree-holder since there was no stay against such execution proceedings; on the advice of the same advocate, he signed some papers including a vakalatnama for resisting the execution proceedings, besides making payment of rupees two thousand towards advocate's fees and other incidental expenses; the said advocate did not do anything in the Court even thereafter; on 4-8-1995 the execution warrant was issued by the Court and he became suspicious of the conduct of his advocate and hence rushed to the Court from where he got the

disquieting information that his application to set aside the ex parte decree stood dismissed for default as early as 17-2-1993 and that nothing was done in the Court thereafter on his behalf; he also learned that his advocate had left the profession and joined as the Legal Assistant of M/s Maxworth Orcheads India Limited; hence he filed the present application for having the order dated 17-2-1993 set aside; he also moved the District Consumer Disputes Redressal Forum, Madras North ventilating his grievance and claiming compensation of rupees one lakh as against his erstwhile advocate; and the said forum passed final order directing the said advocate to pay compensation of Rs fifty thousand to the appellant besides a cost of Rs five hundred.

It is in this context that the Supreme Court observed that the appellant's conduct did not, on the whole, warrant to castigate him as an irresponsible litigant; what he did in defending the suit was not very far from what a litigant would broadly do; while it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation, but during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences; condonation of delay is a matter of discretion of the court; Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit; length of delay is no matter, acceptability of the explanation is the only criterion; sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory; once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally

the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse; but it is a different matter when the first court refuses to condone the delay; in such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

v. VEDABAI VS SHANTARAM BABU RAO PATIL: (2001) 9 SCC 106:

The appeal, in **Vedabai vs Shantaram Babu Rao Patil: (2001) 9 SCC 106,** was filed against the order of the Bombay High Court declining to interfere with the order of the Additional District Judge, Amalner. The appellant had made an application for condonation of delay of 7 days in filing the appeal against the order of the trial court.

It is in this context that the Supreme Court observed that the learned Additional District Judge had found fault with the appellant on two grounds: (*i*) the judgment under appeal was delivered on 30-4-1997 but the application for certified copy was made on 5-6-1997, and (*ii*) in regard to the averment in the affidavit, filed in support of the application, her illness was given as a reason for the delay; it was pointed out that while she was still ill she filed the appeal, and for those two reasons the application to condone the delay of seven days in filing the appeal was dismissed; it appeared that the fact that, during the period from 1-5-1997 to 1-6-1997, the court was in vacation, had escaped the attention of the Appellate Judge; to avert further delay in filing the appeal, as soon as she felt a little better she filed the appeal; this depicted her anxiety to minimise the delay rather than falsity of her case or mala fides; in exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach; a distinction

must be made between a case where the delay is inordinate and a case where the delay is of a few days; whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case, no such consideration may arise and such a case deserves a liberal approach; no hard-and-fast rule can be laid down in this regard; the court has to exercise the discretion on the facts of each case keeping in mind that, in construing the expression “sufficient cause”, the principle of advancing substantial justice is of prime importance; in this case, the discretion under Section 5 of the Limitation Act was exercised by the Additional District Judge in contravention of the law laid down by the Supreme Court.

vi. RAMLAL V. REWA COALFIELDS LTD., 1961 SCC ONLINE SC 39 : AIR 1962 SC 361:

In **Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39 : AIR 1962 SC 361,** the Supreme Court held that, in construing Section 5. it is relevant to bear in mind two important considerations; the first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties; in other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed; the other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal; this discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice; the words ‘sufficient cause’ receiving a liberal construction so as to advance

substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant; even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right; the proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5; if sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone; if sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay; this aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant; it cannot justify an enquiry as to why the party was sitting idle during all the time available to it.

vii. V.BALWANT SINGH V. JAGDISH SINGH, (2010) 8 SCC 685:

In **V.*Balwant Singh v. Jagdish Singh*, (2010) 8 SCC 685,** the Supreme Court held that the law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise; these principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case; once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly as a result of negligence, default or inaction of that party; justice must be done to both parties equally; then alone the ends of justice can be achieved; if a party has been thoroughly

negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly; the Court should not give such an interpretation to the provisions which would render the provision ineffective or odious; accepting the contention of the learned counsel appearing for the applicant that the Court should take a very liberal approach and interpret Section 5 of the Limitation Act liberally, irrespective of the period of delay, it would amount to practically rendering the provisions redundant and inoperative; such approach or interpretation would hardly be permissible in law; the party should show that, besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay; and the test of whether or not the cause shown for the delay is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention. (**Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edn., 2005).**

viii. BRIJESH KUMAR V. STATE OF HARYANA, (2014) 11 SCC 351:

In **Brijesh Kumar v. State of Haryana, (2014) 11 SCC 351,** the Supreme Court held that the law of limitation is enshrined in the legal maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation); rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time; in **Esha Bhattacharjee v. Raghunathpur Nafar Academy: (2013) 12 SCC 649,** it was held that lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact; the concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play; the conduct, behaviour and attitude of

a party relating to its inaction or negligence are relevant factors to be taken into consideration; it is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach; the increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed within legal parameters; Courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay; however the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963; sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay; and when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

ix. BASAWARAJ V. LAND ACQUISITION OFFICER, (2013) 14 SCC 81:

In **Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81,** the Supreme Court held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes; the court has no power to extend the period of limitation on equitable grounds; "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."; the statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same; the legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such

a situation; the statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression; it seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale; an unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches; and in **P. Ramachandra Rao v. State of Karnataka: (2002) 4 SCC 578,** the Supreme Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in ***Abdul Rehman Antulay v. R.S. Nayak: (1992) 1 SCC 225.***

The Supreme Court further held that the law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain to the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation; in case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay; no court could be justified in condoning an inordinate delay by imposing any condition whatsoever; the application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay; and, in case there was no sufficient cause to prevent a litigant to approach the court on time, condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the

statutory provisions and it tantamounts to showing utter disregard to the legislature.

x. U.P. JAL NIGAM VS JASWANTH SINGH: (2006) 11 SCC 464:

In **U.P. JAL NIGAM VS JASWANTH SINGH: (2006) 11 SCC 464,** the question which fell for consideration was whether relief should be granted to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of the Supreme Court in **Harwindra Kumar [Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300;** and whether they were entitled to the same relief or not? In other words, the question that arose for consideration was whether employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, could be given the relief in the light of the subsequent decision delivered by the Supreme Court?

It is in this context that the Supreme Court observed that, when a person who is not vigilant of his rights and acquiesces with the situation, cannot claim, after a couple of years, that the same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights; the statement of law has also been summarised in *Halsbury's Laws of England*, para 911, p. 395 as follows: “In determining whether there has been such delay as to amount to laches, the chief points to be considered are: (*i*) acquiescence on the claimant's part; and (*ii*) any change of position that has occurred on the defendant's part; acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it; it is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a

waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted; in such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

The Supreme Court held that, in view of the said statement of law, the respondents were guilty since they had acquiesced in accepting the retirement and did not challenge the same in time' if they had been vigilant enough, they could have filed writ petitions as others did in the matter; therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then, in such cases, the court should be very slow in granting the relief to the incumbent; secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted; in the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years; that will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam; and the court should not come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.

The Supreme Court further held that, in case at a belated stage if similar relief is to be given to the persons who have not approached the court, that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms

of two years' salary and increased benefit of pension and other consequential benefits; and, therefore, they were not inclined to grant any relief to the persons who had approached the court after their retirement.

e. ANALYSIS:

It was mainly because the order of the Joint Charity Commissioner, Pune dated 29.01.2019, holding that the delay had already been condoned, had attained finality as it was not challenged in revision; the defect was curable and the delay in filing a Change Report did not entail non-acceptance or nullification of the changes in the Trust, which were sought to be informed to the authorities with delay, that the Supreme Court, in **Shri Mallikarjun Devasthan v. Subhash Mallikarjun Birajdar, 2024 SCC OnLine SC 646,** set aside the order of the Bombay High Court.

Unlike in **Shri Mallikarjun Devasthan,** Section 111(2) of the Electricity Act prescribes a period of limitation of 45 days in filing the appeal, and the proviso thereto enables the delay in filing the appeal to be condoned only on sufficient cause being shown. Reliance placed by the Appellants on **Shri Mallikarjun Devasthan v. Subhash Mallikarjun Birajdar, 2024 SCC OnLine SC 646,** is therefore misplaced

Unlike in **N.Balakrishnan vs M.Krishnamurthy: (1998) 7 SCC 123** where the Supreme Court was satisfied with the explanation furnished for the delay of 883 days as, what the appellant did, in defending the suit, was not very far from what a litigant would broadly do; and, his omission to adopt extra vigilance, in visiting his advocate at short intervals to check up the progress of the litigation, would not justify his being depicted as an irresponsible litigant, in the present case the explanation furnished for the delay does not constitute sufficient cause for its condonation.

In view of the order passed by the CERC dated 21.08.2021, the Respondent-SECI is required to pay the change in law claim of the Appellant, over a period of 13 years, at an annuity rate of 10.41%. Entertaining this unduly belated appeal would put their entitlement in jeopardy as the Appellant claims an annuity rate of 13.84% which is 3.43% more than what has been granted to them by the CERC. As held by the Supreme Court, in **Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39 : AIR 1962 SC 361** and **V.*Balwant Singh v. Jagdish Singh*, (2010) 8 SCC 685,** expiration of the period of limitation prescribed for filing an appeal gives rise to a right in favour of the respondent to treat the order of the CERC as binding between the parties; and, save sufficient cause, this legal right which has accrued to the respondents, by lapse of time, should not be lightly disturbed, particularly when the delay is directly as a result of negligence, default or inaction of the Applicant-Appellant.

The contention, urged on behalf of the Appellant, that a liberal approach should be adopted, would not justify condonation of delay in the present case, as the concept of liberal approach has to encapsulate the concept of reasonableness, it cannot be allowed a totally unfettered free play, the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration, the scale of balance of justice should be weighed in respect of both parties, the said principle cannot be given a total go-by in the name of liberal approach, and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone. (**Brijesh Kumar v. State of Haryana, (2014) 11 SCC 351; Esha Bhattacharjee v. Raghunathpur Nafar Academy: (2013) 12 SCC 649)**

In examining whether sufficient cause has been shown, for condonation of this inordinate delay of nearly two years, it must be borne in

mind that Section 111(2) of the Electricity Act requires every appeal, under Section 111(1), to be filed within a period of forty-five days from the date on which a copy of the order made by the Appropriate Commission is received by the aggrieved person. The proviso thereto enables the Appellate Tribunal to entertain an appeal, after expiry of the said period of forty-five days, only if it is satisfied that there was sufficient cause for not filing the appeal within the period of limitation of forty-five days. The crucial words in the proviso to Section 111(2) are *"if it is satisfied that there was sufficient cause for not filing it within that period".* In other words, it is only if this Tribunal were to be satisfied, for just and valid reasons, that there was sufficient cause for not filing the appeal within the period of limitation, that the delay can be condoned.

The word "cause" in the proviso to Section 111(2) is preceded by the word "sufficient". It is not every cause for the delay which can be condoned, as this Tribunal should record its satisfaction that there was sufficient cause, justifying condonation of delay. Merriam Webster Dictionary defines the word *"sufficient"* to mean enough to meet the needs of a situation or a proposed end. "Sufficient cause" means an adequate and enough reason which prevented the appellant to approach the court within limitation. (**Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81)**. Consequently, the cause which the applicant is required to show should not only be adequate enough to justify his failure to file an appeal within the period of limitation, but also such as would justify condonation of the delay in invoking the appellate jurisdiction of this Tribunal beyond the stipulated period of limitation of 45 days.

An appeal, under Section 111 of the Electricity Act, lies to this Tribunal both on questions of fact and law, and is akin to a first appeal. As wide powers have been conferred on this Tribunal to pass such orders in the

appeal as it thinks fit, confirming, modifying or setting aside the order appealed against, Parliament was conscious, while conferring such a power, that hearing of each appeal would take considerable time, and yet this Tribunal is statutorily required, by Section 111(5) of the Electricity Act, to endeavor to dispose of the appeal within 180 days of its institution. Any application for condonation of delay should be considered bearing in mind the afore-said factors statutorily stipulated in the Electricity Act. While we may not be understood to have held that, even in cases where sufficient cause is shown, this Tribunal would refrain from condoning the delay beyond 180 days, what this Tribunal is required, while examining whether sufficient cause is shown for condonation of the delay, is to bear in mind whether the cause as shown for the delay is such as to require the delay to be condoned, even if it, in effect, defeats the very purpose for which this Tribunal has been statutorily required to endeavour to dispose of the appeal within 180 days.

It is true that the Supreme Court has held that a meritorious appeal should not be thrown out at the threshold thereby defeating the cause of justice solely on the ground of delay, and that a liberal view should be taken in considering condonation of delay and not a hyper technical view. That does not mean that this Tribunal can ignore the length of the delay in invoking its appellate jurisdiction in all cases, irrespective of whether or not sufficient cause is shown. All that is required of this Tribunal is not to take a rigid view and to examine, on the facts of each given case, whether the cause shown, for belatedly invoking the appellate jurisdiction, would suffice to justify condonation of the delay.

IV. CONDONATION OF DELAY IN OTHER MATTERS: ITS EFFECT:

It is submitted, on behalf of the Applicant-Appellant, that this Tribunal had, on earlier occasions, condoned significant delays on the ground that there were no mala fides or that the matter was meritorious in nature which would have caused serious prejudice to the Applicant therein if delay were not condoned; in Amreli Power Projects Ltd. v. Gujarat Electricity Regulatory Commission & Anr. (Order in I.A. No. 1830 of 2020 in Appeal. No. 277 of 2021), this Tribunal condoned the delay of 967 days; in APRL vs. RERC & Ors. (Order in I.A. No. 1607 of 2020 in D.F.R. No. 89 of 2020 dated 23.01.2023) the delay of 334 + 232 days was condoned; again in Lalitpur Power Generation Company Ltd. vs. Uttar Pradesh Electricity Regulatory Commission (2018 SCC OnLine APTEL 145), this Tribunal condoned the delay of 738 days; and, in Century Rayon Vs. Maharashtra Electricity Regulatory Commission and Ors. (Order in IA No. 625 of 2019 in DFR No. 637 of 2019), this Tribunal condone the delay of 243 days.

A. ANALYSIS:

In **Amreli Power Projects Ltd. and others vs Gujarat Electricity Regulatory Commission and another. (Order of Aptel in IA No. 1830 of 2020 in DFR No. 462 of 2020 dated 12th August, 2021),** the application was filed to condone the delay of 967 days in filing the Appeal. Reliance was placed by the Appellants, among others, on the earlier order of this Tribunal in *Lalitpur Power Generation Co. Ltd.* vs. *UPERC*, 2018 SCC OnLine APTEL 145 where the delay of 738 days in filing the appeal had been condoned.

In its order dated 12.08.2021, this Tribunal observed that, though there was a delay of 967 days in filing the appeal, refusal to condone the delay would result in foreclosing the Applicants/Appellants from putting forth its cause; the Applicants/Appellants had submitted that it had been

struggling on account of financial viability; they had also been involved in long rounds of long litigations so much so that the generating station had even been under shut down for close to 5 years; in its opinion, sufficient cause had been shown by the Applicants/Appellants; ultimately the appeal would be decided after a hearing on merits, and the merits of the case had not been altered to the advantage of the Applicants/Appellants or to the disadvantage of the Respondents; the present case was fit for condonation of delay; however, it would be just and proper to impose some reasonable cost by way of compensation to meet the ends of justice.

In **Amreli Power Projects Ltd**, this Tribunal was satisfied that the Applicants-Appellants struggle on account of financial viability, and their involvement in long rounds of long litigations because of which the generating station had been under shut down for close to 5 years, constituted sufficient cause for condonation of the delay.

The application, in **Lalitpur Power Generation Company Ltd vs Uttar Pradesh Electricity Regulatory Commission and another (**Order in IA No.1626 in DFR No.4374 of 2018 dated 05th December, 2018), was filed seeking condonation of delay of 738 days in filing the Appeal. It was contended, on behalf of the Appellant, that they had preferred Review Petition No.1155 of 2016 on 20.12.2016; the State Commission took 666 days' for adjudication of the review petition, and finally disposed it of by order dated 17.10.2018; the Respondent- UPPCL had also filed Review Petition No.1190 of 2017 against a different order dated 14.02.2017 passed in Petition No.1115 of 2016 which was primarily filed seeking approval of the draft supplementary PPA; the State Commission, after hearing both the Review Petitions together, had decided both the petitions by its order dated 17.10.2018; there was no delay in filing the present Appeal in so far as the impugned order dated 17.10.2018 was concerned; and out of the 738 days,

the State Commission itself had taken 666 days' in deciding the review petition filed by the Appellant.

It is in this context that this Tribunal observed that the order of the State Commission dated 17.10.2018 was a comprehensive, composite order deciding the review petitions of both the parties against which the Appellant had filed the instant Appeal well in time as prescribed under the statute; the delay in filing had been explained satisfactorily, sufficient cause had been shown, and the same was accepted and the delay in filing was condoned.

In the aforesaid case, the delay was occasioned mainly because the Appellant had filed a review petition instead of filing an appeal. As no appeal lies against the order dismissing the review petition, the appellant had necessarily to prefer an appeal against the original order. As held by the Supreme Court, in **DSR Steel (P) Ltd. v. State of Rajasthan, (2012) 6 SCC 782**, the time taken by a party in diligently pursing the remedy by way of review may, in appropriate cases, be excluded from consideration while condoning the delay in the filing of the appeal.

The Application filed in **Century Rayon VS Maharashtra Electricity Regulatory Commission & Ors,** was to condone the delay of 243 days in filing the appeal against the Impugned Order dated 25.04.2018 passed in Case No. 99 of 2017 and 103 days against the Impugned Order dated 25.04.2018 passed in Case No. 246 of 2018.

Aggrieved by the Impugned Order dated 25.04.2018, the Appellants had filed a review petition on 23.08.2018, with a delay of 75 days. The Review petition was dismissed on 27.12.2018 on merits. The second Impugned Order dated 27.12.2018 was received by the Applicants-Appellants and the appeal was filed on 07.02.2019 within the period of 45

days. This Tribunal observed that the delay in filing the Appeal had been explained satisfactorily and sufficient cause had been shown. Hence, the delay in filing the appeal was condoned.

As the appeal was preferred within 45 days of receipt of the order dismissing their review petition, and as the period spent in prosecuting the review petition should ordinarily be excluded in computing the delay in filing the appeal, this Tribunal condoned the delay and entertained the appeal against the original order.

As the sufficient cause to be shown by an applicant, for the delay to be condoned, would depend on the facts and circumstances of each case, this Tribunal would not be justified in applying a uniform criterion, or adopting a single yardstick, to determine whether the cause shown is sufficient to condone the delay in filing the appeal. The test of "sufficient cause" would vary from one case to another. We are satisfied that, in the present case, the cause shown by the Applicant-Appellant, does not constitute sufficient cause.

V. PENDENCY OF APPEALS ON SIMILAR ISSUES: DOES IT OBLIGATE CONDONATION OF THE INORDINATE DELAY:

A. APPELLANTS CONTENTIONS:

On the pending Appeals involving the same question of law, it is submitted on behalf of the Applicants, that (a) an Appeal involving an identical issue *qua* annuity rate is pending before this Tribunal [viz. Appeal No. 492 of 2023 (ACME Bhiwadi Solar Power Pvt. Ltd. & Ors. vs. CERC & Ors.)] ("**ACME Appeal**"); this Tribunal has condoned significant delays on the ground that identical issues were pending before or were decided by APTEL in other appeals *viz*:- (i) Order dated 13.02.2024 in *Tamil Nadu Transmission Corporation Ltd. v. CERC & Ors*. in DFR No. 647 of 2023; (ii)

Order dated 03.04.2023 in *Smt. Sharada Doddi v. GESCOM & Anr*. in DFR No. 330 of 2020.

B. CONTENTIONS OF RESPONDENT-SECI:

It is submitted, on behalf of SECI, that merely because another petition/appeal is pending, cannot be a ground to condone the delay which is dependent on the conduct of the concerned Appellant(s); during the hearing held on 04.04.2024, the Appellant's counsel had submitted that Appeal No. 492 of 2023, on a similar issue challenged by some other developers, is pending before this Tribunal, and therefore this appeal should also be admitted after condoning the delay; I.A No. 2451 of 2023 was filed by National Solar Energy Federation of India seeking intervention in the above Appeal No. 492 of 2023 was dismissed by this Tribunal by order dated 16.01.2024; the Appellants were not diligent and were in fact negligent; they remained inactive for more than two years; their conduct demonstrates that they had not taken any steps, and had in fact proceeded to implement the impugned order, as SECI has been regularly making payments to them; even the buying utilities have been making payments to SECI in terms of the impugned order; it could not be contended that the delay was non deliberate; and the application to condone the delay is liable to be dismissed.

C. ANALYSIS:

It is true that, in **Smt. Sharada Doddi vs Gulbarga Electricity Supply Company Limited & Anr (Order in IA No.1251 of 2020 in DFR No. 330 of 2020 dated 03.04.2023),** the delay of 534 days in filing the Appeal, and in **Tamilnadu Transmission Corporation Ltd vs CERC (Order in IA No. 2415 of 2023 in DFR No.647 of 2023 dated 13.02.2024),** the delay of 301 days in filing the appeal, were condoned on imposition of exemplary costs, on the ground that several appeals on the very same

issue were pending before this Tribunal. Further, the Appellant, In **Smt. Sharada Doddi,** had stated that they would not claim the benefit of interest during the period from the date of impugned order till the present Appeal was entertained, even in case they were to finally succeed in the Appeal.

The question whether the Appellant-applicant should be permitted to invoke the appellate jurisdiction of this Tribunal, despite an inordinate delay of nearly two years, merely because an appeal against the very same order was instituted before this Tribunal by other Solar Power Developers within limitation, should be considered in the light of the law declared by the Supreme Court, in its judgements, to which the attention of this tribunal was not drawn to either in **Smt. Sharada Doddi** or in **Tamilnadu Transmission Corporation Ltd.**

In **U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464,** the question which arose for consideration was whether, in the case of a person who is not vigilant of his rights and acquiesces with the situation, his writ petition can be heard after a couple of years on the ground that the same relief should be granted to him as was granted to a person similarly situated who was vigilant about his rights.

The Supreme Court held that the statement of law had been summarised in *Halsbury's Laws of England*, para 911, p. 395 as follows: “In determining whether there has been such delay as to amount to laches, the chief points to be considered are: (*i*) acquiescence on the claimant's part; and (*ii*) any change of position that has occurred on the defendant's part; acquiescence in this sense did not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it; it is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be

regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted; in such cases lapse of time and delay are most material; and upon these considerations rests the doctrine of laches"; the respondents were guilty since they had acquiesced in accepting the retirement and did not challenge the same in time; if they had been vigilant, they could have filed writ petitions as others did in the matter; therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent; secondly, the question of acquiescence or waiver on the part of the incumbent should also be taken into consideration, whether other parties are going to be prejudiced if the relief is granted; in the present case, if the respondents had challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability; but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years; that would require the Nigam to raise funds which would have serious financial repercussions on the financial management of the Nigam; and the court should not come to the rescue of such persons when they themselves are guilty of waiver and acquiescence.

In **Pathapati Subba Reddy v. LAO, 2024 SCC OnLine SC 513,** the Supreme Court held that, merely because some persons obtained relief in similar matters, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal; the delay is not liable to be condoned merely because some

persons have been granted relief on the facts of their own case; condonation of delay in such circumstances is in violation of the legislative intent or the express provision of the statute.

The law declared by the Supreme Court, in **U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464** and **Pathapati Subba Reddy v. LAO, 2024 SCC OnLine SC 513,** is binding on all courts and tribunals in view of Article 141 of the Constitution of India. This Tribunal would, therefore, not be justified in condoning the inordinate or unexplained delay of nearly two years, and in entertaining the present appeal, merely because an appeal against the same impugned order, filed within limitation, was entertained. It is impermissible for this Tribunal to rely on the earlier orders passed in in **Smt. Sharada Doddi** and **Tamilnadu Transmission Corporation Ltd.**, as the afore-said judgements of the Supreme Court, in **U.P. Jal Nigam** and **Pathapati Subba Reddy**, were not considered in the said orders.

VI. WAIVER:

A. APPELLANTS CONTENTIONS:

In support of their submission that the contention of SECI, that SPDs are estopped from seeking higher annuity rate than 10.41% as they have accepted 10.41% as the applicable annuity rate for Change in Law payments, and have furnished undertakings in that regard, is erroneous, the Applicants state that (a) they are willing to forego the differential annuity rate [*13.84-10.41% = 3.43%*] for the period of delay of *687* days (from 29.02.2022 to 18.01.2024); (b) nowhere have the SPDs, in their letters and undertakings addressed to SECI accepted the annuity rate of 10.41% as '*final and binding*'; (c) SECI's own letters (to SPDs) over two years dated 13.05.2020, 21.12.2020, 27.05.2021, 30.03.2022and 04.11.2022 state that '*future annuity shall be adjusted*'; thus, even in SECI's mind the annuity rate

of 10.41% was not final; (d) there was no explicit 'waiver' by the SPDs of their statutory right to file an Appeal against the Impugned order; intention to relinquish the same has not been established by SECI in the absence of an 'explicit waiver' (**AIPEF v. Sasan Power Ltd. (2017) 1 SCC 487**); (e) an Appeal is a continuation of the original proceedings before the CERC; therefore, until the issue *qua* annuity rate achieves finality in the present Appeal, and subsequently before the Supreme Court (*in case any of the parties prefer a Civil Appeal*), the annuity rate of 10.41% cannot be said to be '*final and binding*'.

B. CONTENTION OF RESPONDENT-SECI:

It is submitted, on behalf of Respondent-SECI, that the Appellants had accepted the Impugned Order, and had proceeded on the said basis; all the parties, namely the Appellants, SECI and the buying utilities, have implemented the decision of the CERC; SECI had, vide its letters dated 03.04.2020, 13.05.2020, 29.05.2020, 17.08.2020, 03.09.2020, 21.12.2020, 27.05.2021, 22.03.2022, 29.03.2022, 30.03.2022, 10.05.2022 and 04.11.2022, informed the appellant regarding reconciliation with respect to Change in law claims as per the project specific orders, as well as the Impugned Order and the methodology for payment of reconciled claims with an annuity rate of 10.41% for a tenure of 13 years from the cut-off date; the Appellants have acknowledged and accepted the reconciled figures furnished by SECI as well as the methodology for payment of the reconciled claims with the annuity rate of 10.41%; pursuant to the above, SECI has been making payment as per the Impugned Order at the annuity rate of 10.41%; reconciliation of the change in law claims took place in the year 2020 ie as early as on 03.04.2020 itself; the letters of the Appellant confirming acceptance of reconciliation as communicated by SECI, and the undertaking given by the Appellants are attached to the reply; even the

buying utilities have been making payments to SECI; and the Appellants, having accepted the methodology of payment at the annuity rate of 10.41% and having receiving annuity payments from SECI, are precluded from now contending that it should receive payment at a higher annuity rate, after such an inordinate delay. Reliance is placed on **Motilal Padampat Sugar Mills Co. Ltd. –v- State of U.P., (1979) 2 SCC 409; R.N. Gosain –v- Yashpal Dhir, (1992) 4 SCC 683; State of Punjab –v- Dhanjit Singh Sandhu, (2014) 15 SCC 144 153.**

C. JUDGEMENTS RELIED ON BY COUNSEL ON EITHER SIDE UNDER THIS HEAD:

1. All India Power Engineer Federation v. Sasan Power Ltd., (2017) 1 SCC 487:

In **All India Power Engineer Federation v. Sasan Power Ltd., (2017) 1 SCC 487,** a petition was filed by WRLDC before the Central Electricity Regulatory Commission (CERC) requesting it to (1) look into the veracity of the certificate issued by the Independent Engineer in view of deliberate suppression and misrepresentation of the facts and issue suitable directions to Respondent 2 to desist from such act. (2) look into the matter of Respondent 1 including into intentional misdeclaration of parameters related to commercial mechanism in vogue and has purported to declare the part (derated) capacity of 101.38 MW as commercial on the grounds of load restriction by WRLDC and issued suitable directions in the matter. (3) issue specific Guidelines with respect to declaration of COD of the generators who are not governed by the CERC (Terms and Conditions of Tariff) Regulations, 2009 to be in line with CERC Regulations so that the same can be implemented in a dispute free manner and eliminate any possibility of gaming by generator.

The CERC set out five issues as follows: "(*a*) Whether the petition filed by WRLDC Is maintainable? (*b*) Whether the certificate issued by IE is in accordance with the PPA and if not, whether IE has made deliberate suppression or misrepresentation of facts while issuing the certificate? (*c*) Whether COD of the station as declared by SPL is in accordance with the PPA? (*d*) Whether Respondent 1 has indulged in misdeclaration of parameters relating to commercial mechanism in vogue? and (e) Guidelines with regard to the commercial operation of a generating station which is not regulated by the Tariff Regulations of the Commission.

CERC answered Issues (*a*), (*b*), (*c*), and (*e*) in the affirmative and Issue (*d*) in the negative. Ultimately the Commission arrived at the conclusion that COD had not been achieved on 31-3-2013 but had only been achieved later, on 16th August of the same year. This finding was set aside by the Appellate Tribunal by its judgment dated 31-3-2016 [*Sasan Power Ltd.* v. *Central Electricity Regulatory Commission*, 2016 SCC OnLine Aptel 91] , in which the Appellate Tribunal found that though COD had not been achieved on 31-3-2013 in accordance with the PPA, but that the procurers under the PPA had waived their right to demand performance at 95%, and that the performance of Unit 3, which was only roughly 17% of its contracted capacity, was accepted by all the procurers, and that therefore there was a waiver of this essential condition, which would then entitle the generator to treat 31-3-2013 as the date on which commercial operation of Unit 3 commenced. It is the correctness of this judgment which was assailed before the Supreme Court.

It is in this context that the Supreme Court held that, when waiver is spoken of in the realm of contract, Section 63 of the Contract Act, 1872 governs; waiver is an intentional relinquishment of a known right, and, unless there is a clear intention to relinquish a right that is fully known to a

party, a party cannot be said to waive it; there is no such clear intention that can be spelt out on a reading of the two emails; all that can be spelt out is that the first email of 31-3-2013 categorically states that the test result is not as per Article 6.3.1, and is not acceptable; the last sentence of this very email then refers to Article 6.3.4 and to a derated capacity of 101.38 MW; thereafter, the email of 2-4-2013 expands on the aforesaid last sentence of the earlier email by referring to Article 6.3.4 and Article 11 proviso; this is akin to a "without prejudice" acceptance of derated power, being a non-acceptance of the test certificate dated 30-3-2013 coupled with a desperate attempt to somehow get whatever power is available; but this does not amount to a clear and unequivocal intention to relinquish a known right.

2. MOTILAL PADAMPAT SUGAR MILLS CO. LTD. V. STATE OF U.P., (1979) 2 SCC 409:

In **Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409,** the Supreme Court held that the true principle of promissory estoppel, is that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not; it is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment; what is necessary is only that the promisee should have altered his position in reliance on the promise; what

is necessary is no more than that there should be alteration of position on the part of the promise; the alteration of position need not involve any detriment to the promise; if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient; the detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise.

3. R.N. GOSAIN V. YASHPAL DHIR, (1992) 4 SCC 683:

In **R.N. Gosain v. Yashpal Dhir, (1992) 4 SCC 683,** the Supreme Court held that the law does not permit a person to both approbate and reprobate; this principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage"; and, according to *Halsbury's Laws of England*, 4th Edn., Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508).

4. STATE OF PUNJAB V. DHANJIT SINGH SANDHU, (2014) 15 SCC 144:

In **State of Punjab v. Dhanjit Singh Sandhu, (2014) 15 SCC 144,** the Supreme Court held that, once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground; the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it; the doctrine of estoppel by election is one among the species of

estoppel in pais (or equitable estoppel), which is a rule of equity; by this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had

D. ANALYSIS:

By its letter dated 04.04.2022, the Applicant informed SECI that they were acknowledging and confirming that the compensatory payment, as mentioned in SECI's letter dated 30.03.2022 as reconciled between the Applicant and the SECI as per the table, were calculated based on the principles laid down by CERC in its order dated 20.08.2021; the reconciliation was being accepted by the Appellant-Applicant without prejudice to their rights and remedies available under law; and they reserved their right to claim any part or full disallowed amount along with carrying cost before the Appropriate Commission. It is further stated in the said letter that, as understood, it had been decided by SECI that the aforesaid compensatory payment would be made to the Applicant-Appellant adopting annuity methodology upon considering annuity rate of 10.41 % spread over a period of thirteen years and, in terms of SECI's letter dated 30.03.2022, they were furnishing an undertaking. Similar letters were addressed by the Applicant with respect to its other projects also.

By their letter dated 10.05.2022, SECI informed the Applicant that reconciliation of their GST claim had been revised pursuant to the order of the CERC dated 20.08.2021; details of the revised reconciliation of the GST claim of the Applicant was given in the form of a table; the revised reconciled claim was being sent to the buying entities; in case any comments/observations were received from the buying entities, the same would be intimated to the Applicant for necessary action/compliance; and the Applicant would be required to submit an undertaking in order to enable

continuing the annuity payment on provisional basis. The undertaking to be submitted by the Applicant required them, in case of any observations/directions and decisions of any Tribunal/ Court/ Commission/ GOI which was contrary to the reconciliation stated in the letter dated 10.05.2022, future annuity shall be adjusted immediately and excess amount, if any, shall be returned by the Applicant to SECI along with interest at 10.41% per annum.

The said letter dated 10.05.2022 related to the Applicant's GST claim for project ID-E2 B3 P5-ESPL-P-II-3V. Similar letters were addressed with respect to the Applicant's other projects by SECI's letters dated 20.03.2022, 29.03.2022, 30.03.2022.

By their letter dated 17.05.2022, the Applicant-Appellant responded to SECI's letter dated 10.05.2022 confirming that the compensatory payment as mentioned in SECI's letter dated 10.05.2022, as reconciled between the Applicant and SECI, were calculated based on the principles laid down by CERC in its order dated 20.08.2021; the reconciliation was being accepted without prejudice to the rights and remedies available to the Applicant under law; and the Applicant reserved its right to claim any part or full disallowed amount along with carrying cost before the Appropriate Commission. The Applicant further informed that the aforesaid compensatory data as decided by SECI the compensatory payment would made to the Applicant adopting the annuity methodology upon considering annuity rate of 10.41 % spread over a period of thirteen years and they were furnishing an undertaking in response to the SECI's letter dated 10.05.2022. Similar letters were addressed by the Appellant-Applicant with respect to its other projects.

By their letter dated 04.11.2022, SECI informed the Applicant-Appellant that they had reconciled the claims based on submissions of documents/details by the Applicant as per the methodology provided by the CERC; keeping in view the principles laid down by CERC in its order dated 20.08.2021 in SECI's petition; the claim for compensation in respect of imposition of GST had been reconciled for provisional payment up to the cut off date as decided by the CERC; as directed by the CERC, in its order dated 20.08.2021, the methodology of payment of compensation on account of imposition of GST shall be on annuity basis; accordingly annuity calculation had also been carried out; the monthly annuity calculations had been carried out with the discount rate of 10.41 % for a period of thirteen years from the cut off date; and in case the respective buying entities compensate the reconciled GST claim on lump sum the same methodology shall be followed. After giving details of the GST claim of the Applicant and examination of GST changed by SECI in the form of a table, SECI informed the Applicant of the details of the annuity payment calculated against the claims up to the cut off date; and that the proposed annuity payment shall be subject to an undertaking to be furnished by the Applicant as detailed in the said letter.

The contents of the aforesaid letters reveal that the Applicant was made aware of the reconciled amount, the annuity payment and that the said payment would include carrying cost at 10.41 %. Despite their being made aware that the annuity rate would be at 10.41 %, the Appellants continued to receive payments at the said annuity rate for a period of more than two years, and chose to file the present appeal only on 18.01.2024 questioning the said annuity rate stipulated in the impugned order of the CERC dated 21.08.2021. While we find considerable force, in the submission urged on behalf of SECI, that the appellant, by receiving

payment for more than two years, must be held to have acquiesced to the impugned order passed by the CERC, it is unnecessary for us to dwell on this aspect as, even otherwise, the appeal necessitates rejection on the ground that it was filed with an inordinate and unexplained delay of 687 days, without showing sufficient cause for its condonation.

VII. CONCLUSION:

For the afore-said reasons, we are satisfied that the cause shown by the appellant, for the inordinate delay of nearly two years (ie 687 days) in filing the present appeal, is wholly insufficient. As the explanation furnished for this period of delay is neither satisfactory nor reasonable, we see no reason to exercise discretion, under the proviso to Section 111(2) of the Electricity Act, to condone this delay of 687 days. The Application, seeking condonation of delay, is dismissed and the Appeal stands rejected. All the other IAs shall also stand dismissed.

Pronounced in the open court on this the **22nd day of August, 2024**.

(Seema Gupta)	(Justice Ramesh Ranganathan)
Technical Member (Electricity)	Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

tpd