

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

ORDER ON

IA No. 1136 of 2019 IN DFR No. 2148 of 2019

Dated :24th July, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

1. M/S UTTARAKHAND POWER CORPORATION LIMITED

V. C. V. Gabar Singh Urja Bhawan, Kanwali Road,
Dehradun-248001, Uttarakhand

.....Appellant

VERSUS

1. M/S UTTAR BHARAT HYDRO POWER PVT. LTD

A-2/452, Sector-8, Rohini, New Delhi-110085

2. UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Through its Secretary
Vidyut Niyamak Bhawan,
Near ISBT, PO-Majra,
Dehradun-248171, Uttarakhand

.....Respondents

Counsel for the Appellant (s) : Mr. Yakesh Anand
Mr. Santhosh Krishnan
Ms. Sonam Anand
Mr. Nimit Mathur

Counsel for the Respondent(s) : Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya

Mr. Arvind Kumar Dubey for R-1

Mr. Buddy A. Ranganadhan
for R-2

ORDER

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The instant application has been filed by the Applicant / Appellant along with the accompanying appeal under Rule 30 of the Appellate Tribunal Rules, 2007 for condoning the delay of 768 & 21 days respectively in filing the accompanying appeal challenging the orders dated 16.03.2017 and 02.04.2019 passed by the Uttarakhand Electricity Regulatory Commission.
2. The present appeal has been preferred by the Appellant challenging (i) the impugned order dtd. 16.03.2017 for determination of project specific tariff for 10.5 MW Small Hydro Power Project under Section 62 and 86 of the Electricity Act, 2003 read with Regulation 13 of Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Nonconventional and Renewable Energy Sources) Regulations, 2013 and (ii) Review order dated 02.04.2019 in Misc. Application No.96/2018 passed by the Uttarakhand Electricity Regulatory Commission in the matter of review petition filed under Regulation 54 of the UERC (Conduct of Business Regulations), 2014 for review of the order dated 16.03.2017 passed by the Commission in the matter of determination of Project specific Tariff for 10.5 MW SHP (Sarju-III) on Sarju river at Kapkote, Bageshwar district, Uttarakhand u/s 62 & 86(1)(b) and 86(1)(e) of the

Electricity Act, 2003 read with Regulation 13 of UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2013.

3. The gist of the submissions made by the learned counsel for the Applicant / Appellant are as under:-

- 3.1 Respondent's petition dated 16.01.2015 for determination of tariff for Sarju III was decided by Tariff Order dated 16.03.2017, wherein the Commission found merit in the Respondent's claim that cloud bursts in the vicinity of the project site for Sarju III project had delayed the execution of the project and accordingly, 100% of the IDC incurred was allowed by the Commission. This order was passed by the Commission in the absence of the District Magistrate's report which was received by the Commission on 08.06.2017.
- 3.2 Subsequently, the Commission decided the petition dated 09.03.2017 for Sarju II Project on 21.08.2018. In the said tariff order, the Commission disallowed 50% of the average interest cost for the period of 48 months on placing reliance on the report dated 08.06.2017 furnished by the District Magistrate, Bageshwar (in respect of loss occasioned to the Sarju III project by cloud burst), loss was assessable for 2010 and 2012 but not for 2011 and 2013. The Commission observed that the said report, though prepared in relation to Sarju III, was relevant to Sarju II as well as the two projects were proximate.
- 3.3 On the emergence of this new fact/evidence and having regard to the disparity in treatment of identical facts in the two tariff orders, the

Appellant herein filed Review Petition (Misc. Appln. No.96/2018) before the Commission on 05.12.2018 seeking review of the Tariff Order dated 16.03.2017 for Sarju III. However, the State Commission rejected the Appellant's Review Petition by way of Order dated 02.04.2019.

3.4 In view of the abovementioned facts, there has been a delay of 768 days in filing the present appeal against the order dated 16.03.2017. It is however submitted that the said delay inasmuch as the Appellant had filed the review petition (Misc. Application No.96/2018) before the State Commission which was decided by the Commission only on 02.04.2019.

3.5 The review order dated 02.04.2019 was communicated to the Appellant on 21.04.2019. After the receipt of the order dated 02.04.2019, the Appellant consulted and met its counsel and had detailed discussions as the matter involved technical issues. On account of the various follow ups, there has been a delay of 21 days in filing the present appeal with respect to the order dated 02.04.2019.

3.6 The said delay is neither deliberate nor intentional but only on account of the facts stated hereinabove. The present application is bone fide and the Appellant is thus praying that the delay of 768 & 21 days respectively in filing the accompanying appeal challenging the orders dated 16.03.2017 and 02.04.2019 be condoned by this Tribunal and the appeal be heard on merits.

3.7 The Applicant / Appellant respectfully prays that this Tribunal may be pleased to:

- a. condone the delay of 768 days in filing the appeal challenging the orders dated 16.03.2017 passed by the Uttarakhand Electricity Regulatory Commission;
- b. condone the delay of 21 days in filing the appeal challenging the review orders dated 02.04.2019 passed by the Uttarakhand Electricity Regulatory Commission;
- c. pass such further order or orders as this Hon'ble Tribunal may deem just and proper in the circumstances of the case.

4. **The gist of the Rejoinder submissions made by the learned counsel for the Applicant /Appellant are as under:-**

4.1 After the Tariff Order was pronounced on 16.03.2017, there was a review petition filed. The Review Petition was disposed only on 02.04.2019. There are several Judgements of this Tribunal which have condoned substantial delay in filing of appeal, having regard to the fact that the matter was otherwise pending in review. Reliance is placed on Judgement dated 31.01.2019 in *Damodar Valley Corporation v. WB Electricity Regulatory Commission*, DFR No.3178/2018 where there was 1143 days of delay.

4.2 Reliance is also placed on *Gujarat Urja Vikas Nigam Ltd v. CLP Power India Pvt. Ltd.*, judgement dated 08.04.2019 in DFR No.3722/2018 where delay of 1082 days was condoned on the ground of pendency of review petition against the main order.

- 4.3 Reliance is further placed on the Privy Council's Judgement in *Brij Indar v. Kashi Ram*, AIR 1917 PC 156, where it has been held that in cases of delay, the period during which the review petition was pending may be excluded so long as the applicant satisfies the ingredients of Section 14, Limitation Act.
- 4.4 The review petition was filed on 05.12.2018. As far as delay preceding the filing of the review petition is concerned, it is necessary to explain why the Appellant was constrained to pursue review before the State Commission in the first place. Though the Tariff Order dated 16.03.2017 for Sarju III was pronounced on 16.03.2017, the error apparent in the said tariff order only became obvious much later, upon discovery of new evidence and materials. To be precise, it is only upon perusal of a subsequent order of the State Commission, i.e. the Tariff Order dated 21.08.2018 in respect of Sarju II, the unsustainability of Tariff Order dated 16.03.2017 for Sarju III became apparent. To further explain – a perusal of Tariff Order dated 21.08.2018 showed that in ascertaining the veracity of Respondent's assertions as to delay occasioned by cloud-bursts, the Commission had relied upon the District Magistrate's Report dated 25.05.2017. By such reliance, the Commission had partly rejected Respondent's prayer for "interest during construction" (IDC) during the period of delay in completion of the project. The fact that the Commission had partly disbelieved the Respondent's assertions in respect of cloud-bursts for tariff determination of Sarju II (vide Tariff Order dated 21.08.2018), but wholly believed the very same assertions for Sarju III was irreconcilable. In the Appellant's understanding of the legal position, this was a good ground to revisit

and review the tariff order of Sarju III. In this context, regard may be had to fact that the District Magistrate's Report dated 25.05.2017 had actually been furnished in relation to queries on delay of completion of Sarju III. However, the Tariff Order dated 16.03.2017 had been passed even before the said report had been furnished (this is apparent from the fact that the District Magistrate's Report is dated 25.05.2017). It was therefore Appellant's *bona fide* belief that the State Commission had acted with haste and in disregard of materials (that ought to have been awaited), in the determination of tariff qua Sarju III.

4.5 The delay in filing of review qua Tariff Order dated 16.03.2017 can thus be understood when it is seen that the main ground in seeking review is finding contained in Tariff Order dated 21.08.2018 (qua Sarju II) on the basis of District Magistrate's Report dated 25.05.2017 (that had actually been prepared for Sarju III). Without the Tariff Order dated 21.08.2018 or District Magistrate's Report dated 25.05.2017, there would have been no prospect in seeking review of Tariff Order dated 16.03.2017 qua Sarju III. Hence, there was no deliberate delay between the Tariff Order dated 16.03.2017 and Tariff Order dated 21.08.2018.

4.6 Regarding the maintainability of the Appeal, as alleged by the first Respondent, reliance is placed on Order 47, Rule 7, CPC and Judgement of this Tribunal in *VRL Logistics Ltd. v. Hubli Electric Supply Co.*, dated 02.04.2014 in DFR No.2718/2013. In the present case, Appellant has challenged both the Tariff Order dated 16.03.2017 (First Impugned Order or Main Order) and also, Review Order dated 02.04.2019. The challenge is not confined only to

Review Order dated 02.04.2019. This is unlike the case in *VRL Logistics* (supra) where only the rejection of review was challenged. In *VRL Logistics* (supra), the appellant therein had already challenged the main order by way of a prior appeal, which appeal was disposed off by this Hon'ble Tribunal. Thereafter, the appellant filed review petition before the State Commission qua the same order (which had been appealed against before the Appellate Tribunal). Even the review petition was dismissed and it is then, *VRL Logistics* then sought to agitate the correctness of the review order by a substantive appeal. That appeal was dismissed as not maintainable by this Hon'ble Tribunal by reliance on Order 47, Rule 7, CPC. Hence, *VRL Logistics* (supra) is distinguishable on facts.

- 4.7 It is relevant to submit that even the Supreme Court has applied Order 47, Rule 7, CPC to dismiss SLPs when the challenge is against the review order *alone*. Reference is made to the judgement in *Sandhya Educational Society v. Union of India*, (2014) 7 SCC 701 where it was observed:

“8. The consistent view of this Court appears to be that the special leave petition under Article 136 of the Constitution is not maintainable against the order rejecting the review petition alone.”

- 4.8 The Appellant has challenged the Review Order dated 02.04.2019 as well as the basis for dismissal of the review petition is unsustainable and ought to be interfered with, for various reasons. However, if the Main Order dated 16.03.2017 itself is held to be unsustainable, the necessity to pursue Appellant's grievance qua the Review Order dated 02.04.2019 may not survive. In any case, the grounds canvassed in appeal, challenging the correctness of the

review order, may be read as part and parcel of Appellant's request for condonation of delay in challenging the Main Order dated 16.03.2017. The grounds raised by Appellant in challenging Review Order dated 02.04.2019 demonstrate that the said review was not a frivolous exercise but actuated by bona fide reasons.

4.9 Respondent No.1 has asserted that on account of the delay of 768 days in challenging the Main Order dated 16.03.2017, "*a right has accrued to the Respondent No.1 to treat the Order as final*". Respondent has relied upon the Supreme Court's judgement in *Ramlal Motilal v. Rewa Coalfields*, (1962) 2 SCR 762 in this regard. It is submitted that this assertion is borne out of a misconception and the reliance on the judgment of the Supreme Court is also mistaken. Considering that the Appellant had challenged the First Impugned Order dated 16.03.2017 by way of review, it was not as if Respondent was unaware that: (i) Appellant was aggrieved by the said order, and (ii) Appellant was taking recourse to remedies in law, to upset the said order. Nothing irreversible has occurred, no irretrievable event has occurred on account of the First Order dated 16.03.2017 for Respondent to insist that the passage of time is itself sufficient basis to deny Appellant's request for condonation. Clearly, the "right" spoken of in *Ramlal Motial* (supra) is not a vested or indefeasible right inasmuch as it is capable of being overridden by condonation of the delay. Condonation of delay is discretionary but the discretion ought to be exercised in Appellant's favour in the present case.

4.10 The Supreme Court has explained the correct approach to understanding "sufficient cause" in several cases. In *State of W.B.*

v. Administrator, Howrah Municipality, (1972) 1 SCC 366, the Court has explained *Ramlal Motilal v. Rewa Coalfields*, (1962) 2 SCR 762 (relied upon the Respondent) to hold as follows:

“30. From the above observations it is clear that the words “sufficient cause” should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.”

4.11 References are also made in this regard to the rulings in:

- (i) *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123
- (ii) *Ram Nath Sao v. Gobardhan Sao*, (2002) 3 SCC 195
- (iii) *Collector (LA) v. Katiji*, (1987) 2 SCC 107
- (iv) *State of Haryana v. Chandra Mani*, (1996) 3 SCC 132
- (v) *State of Nagaland v. Lipok Ao*, (2005) 3 SCC 752

4.12 The duty of the Appellant, a government undertaking, is to show that there was no negligence, inaction or want of bona fides. This has been sought to be shown by the explanation hitherto set out hereinbefore.

4.13 Both the State Commission and Respondent have failed to properly appreciate the nature of Appellant’s submission on the “new and importance evidence” attracting review. The cloud-burst in question alleged to have occurred in 2010, 2011, 2012 and 2013, as per the Respondent’s version. It was up to the Respondent to prove the occurrence. As per the District Magistrate’s Report dated 25.05.2017, relied upon in Tariff Order dated 21.08.2018, the Respondent’s version as to delay/damage occasioned by cloud-burst in 2011 and 2013 could *not* be proved. The facts in question relate back to 2011 and 2013, well before the Main Order dated 16.03.2017. The fact that delay/damage did not occur in 2011 or

2013 are not subsequent events. Appellant discovered these facts only by study and reference to Tariff Order dated 21.08.2018. The discovery is subsequent and so also, the means of discovery (i.e. Tariff Order dated 21.08.2018). This is not the same as a situation where the essential facts or circumstances warranting review have occurred subsequent to the main order.

4.14 Without prejudice to the foregoing submission, on *demurrer*, the Appellant's discovery of the relevant facts subsequent to the Main Order may be relevant to condone the present delay in filing appeal against the Main Order dated 16.03.2017. As elaborated hereinbefore, the reason for the delay in filing the appeal against the Main Order dated 16.03.2017 is two-fold:

- (a) Subsequent discovery of material facts undercutting the correctness and sustainability of the Main Order – the subsequent discovery came about with the pronouncement of the Tariff Order dated 21.08.2018.
- (b) Bona fide institution and pursuit of review petition, on the strength of the subsequent discovery of material facts.

4.15 The newly discovered evidence is the District Magistrate's Report dated 25.05.2017 relied upon in Tariff Order dated 21.08.2018. Respondent is projecting an incorrect position as to Appellant's stand as to why District Magistrate's Report dated 25.05.2017 and Tariff Order dated 21.08.2018 are relevant. These documents are relevant because they expose and falsify Respondent's assertions as to delay/damage suffered by cloud-burst in 2011 and 2013. It is only with the perusal of Tariff Order dated 21.08.2018 that the false narrative of Respondent became relevant. It is circular logic for the

Respondent to contend that Appellant failed to immediately challenge Main Order dated 16.03.2017 for failing to await and examine the District Magistrate's Report dated 25.05.2017. Considering that this report was furnished only subsequently to the Commission and further considering that the Commission itself found it fit to rely on this report for the tariff of Sarju II, it is but natural that the contradiction in approach of the Commission could only be faulted after the Tariff Order dated 21.08.2018 was pronounced.

4.16 The Commission ought to have condoned the delay in question as some time was taken by the Appellant organisation to obtain appropriate legal advice and act on the basis of the newly discovered materials. Only a period of less than three months elapsed between the Tariff Order dated 21.08.2018 and the filing of the Review Petition. In any case, the Commission has refused to condone the delay in question on a misunderstanding of the relevant law and not, on absence of sufficient cause. The Commission refused to condone the delay/extend the time in question on the basis that there is no scope for extension of time/condonation of delay. However, Regulation 63 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 confers the power to condone delay/extend time in the following terms:

“63. Extension/abridgement of time directed: Subject to the provisions of the Central Act or the State Act, the time directed by these regulations or by Order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by Order of the Commission.”

4.17 The Respondent is raising hyper-technical objections even for 21 days' delay with the avowed aim to avoid an adjudication on merits.

The delay of 21 days was *inter alia*, on account of the fact that there was some confusion initially as to whether Appeal should be confined to only the Review Order or also, the Main Order. The matter was also quite technical in nature and required more than one meeting and series of discussions. Upon study of the matter and legal advice received, it was decided that for abundant caution, Appeal may be pursued qua both orders so as to ensure no technical objection is raised to defeat a substantive adjudication in the matter. It is inappropriate for the Respondent to expect that the nature of discussions between the Appellant and its counsel would be communicated to the Respondent. The condonation of delay of 21 days would not prejudice the Respondent in any case.

4.18 The judgement cited by the Respondent in the Reply is distinguishable from the present case. In that case, the only circumstance that that led to the filing of the belated appeal was an observation of the High Court. Here, there was discovery of evidence pertaining to material facts which occurred subsequent to the expiry of period of limitation. The said evidence was relied upon as material and relevant by the State Commission in its subsequent Tariff Order dated 21.08.2018.

4.19 The Respondent is evading its responsibility for having set up a false narrative regarding the alleged delay occasioned by the cloud-bursts in 2011 and 2013. The onus was on the Respondent to prove that there were such cloud-bursts and such cloud-bursts delayed and damaged the project of Sarju III. The State Commission erred in accepting Respondent's version without appropriately verifying it. This mistake or omission was exposed and discovered by the

Appellant only with the pronouncement of the Tariff Order dated 21.08.2018. It is incorrect for the Respondent to contend that Appellant has not challenged the Tariff Order dated 16.03.2017 for failing to duly verify Respondent's assertions as to delay caused by cloud-burst. This very appeal raises the challenge. Respondent's said contention also begs the question as to how the Appellant was to have challenge the Tariff Order dated 16.03.2017 in the manner presently challenged, when neither the District Magistrate's Report dated 25.05.2017 nor Tariff Order dated 21.08.2018 were in existence at the time, which have negated Respondent's narration of facts. It is incorrect for the Respondent to contend that the District Magistrate's Report is irrelevant and not necessary to ascertain the genuineness of Respondent's assertions regarding delay. The said report is relevant and necessary for the simple reason that it falsifies and contradicts Respondent's narration of facts.

4.20 The Respondent's Reply contain references to a judgement regarding the relevance of subsequent orders for availing review. It is respectfully submitted that this judgement is distinguishable because in the present case, the subsequent order is per se, not the ground for review. It is discovery of material facts, as contained in the subsequent order, which forms basis for review. The material facts in question are of 2011 and 2013. The said facts pertain to whether there was damage caused to the project (Sarju III) on account of cloud bursts that occurred in 2011 and 2013. The District Magistrate's Report dated 25.05.2017 contradicts Respondent's claim that the project was impacted. Tariff Order dated 21.08.2.018 has only taken note of these material facts. Tariff Order dated 21.08.2018, though subsequent in point of time, has rendered

findings for the period of 2011 and 2013, which was prior to the Main Order dated 16.03.2017. Tariff Order dated 21.08.2018 is only an exemplar or evidence corroborating the material fact that the cloud-burst of 2011/2013 did not impact Respondent's project, Sarju III.

4.21 It is impossible for Appellant to have procured either the District Magistrate's Report dated 25.05.2017 or Tariff Order dated 21.08.2018 any sooner than they came into existence. These documents came into existence subsequently, and support Appellant's submission as to material facts on the cloud-bursts of 2011/2013. Appellant filed a review petition with diligence only on the bona fide understanding that the Commission ought to be apprised of the error and omission in Tariff Order dated 16.03.2017.

4.22 The judgements cited by Respondent at para 18 – 21 are distinguishable and inapplicable to the present case. The judgements relied upon and cited by the Appellant are applicable and may be relied upon, for condonation of delay.

5. The gist of the Reply submissions made by the learned counsel for the Respondent No.1 are as under:-

5.1 At the outset, it is submitted that the appeal against Review Order dated 02.04.2019 is not maintainable in view of Order 47 Rule 7 of the Code of Civil Procedure. The State Commission had vide Order dated 02.04.2019 rejected the review petition on the grounds of limitation as well as on the merits. This Hon'ble Tribunal has already held that the rejection on grounds of limitation cannot be challenged in appeal (VRL Logistics Limited –v- Hubli Electric Supply Company Limited and Anr. in Judgment dated 2.04.2014 passed by this

Hon'ble Tribunal in DFR No. 2718 of 2013). Therefore, the appeal to that extent is not maintainable.

- 5.2 The Appellant has filed the present Appeal with considerable delay of more than 2 years – 768 days. In the meantime, a right has accrued to the Respondent No. 1 to treat the Order as final and the Respondent No. 1 has planned on the basis of the tariff determined by the Impugned Order. The Hon'ble Supreme Court has recognized the legal right accrued and also recognised that such right should be no light-heartedly disturbed. In *Ramlal Motilal v. Rewa Coalfields Limited* (1962) 2 SCR 762, the Hon'ble Court held as under:

*“7. 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. As has been observed by the Madras High Court in *Krishna v. Chathappan* [(1890) ILR 13 Mad 269] “Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; 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.*”

.....

12. It is, however, necessary to emphasise that *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 a 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.”

There is no sufficient cause shown by the Appellant and therefore there cannot be any condonation of delay. The justification given by the Appellant is discovery of new evidence once the Order dated 21.08.2018 was passed in respect of another project of the Respondent No. 1. The Appellant has then sought to rely on the filing of the Review Petition before the State Commission. It is pertinent to note that the delay in filing of the Review Petition has not been condoned by the State Commission.

5.3 In this regard, the Respondent No. 1 submits in brief as under:

- a) No event or circumstance arising after the period of limitation can constitute sufficient case. The Appellant has not given any reason why the Order was not challenged within the time prescribed under Section 111.

- b) The alleged new evidence has not been produced. The Appellant at no point pursued, let alone acted with any due diligence for procuring the evidence. The Appellant did not claim or contend at any point, that the Impugned Order dated 16.03.2017 could not have been passed without Report of the District Magistrate. No appeal had been filed by the Appellant on the basis that the Order has been passed in absence of the Report.
- c) The Appellant cannot rely on orders passed in other matters subsequently to pursue its appellate remedy. Orders passed in other matters are not new evidence/documents.
- d) Even after the Order dated 21.08.2018 was passed, the Appellant did not immediately file Appeal or even review. The Appellant filed the Review Petition nearly three and half months after the Order dated 21.08.2018 was passed. There is no explanation at all by the Appellant for the above.
- e) Even after the Order dated 02.04.2019 was passed in the Review Petition, the Appellant did not immediately file the present Appeal. The Appeal was filed only in June 2019 i.e more than 2 months after the Order in Review Petition. Admittedly there is a delay of 21 days even after counting of 45 days from the Review Order.
 - a. A right has accrued in the Respondent No.1 in terms of the Impugned Order and any challenge to the Impugned Order at this belated stage after more than 2 years would be prejudicial.

5.4 The Review Petition itself was filed with substantial delay. The Review Petition was filed only on 01.12.2019 i.e. nearly 21 months

after the Impugned Order dated 16.03.2017 was passed. Therefore, the filing of the Review Petition was much beyond the time period of filing of the appeal under Section 111 of the Electricity Act, 2003 which is 45 days. In fact, the Review Petition was not even filed within the time stipulated under the UERC Conduct of Business Regulations which is 60 days as against 45 days for appeal. However, despite the additional time for filing of Review Petition, the Appellant did not file the Review Petition within time.

- 5.5 It is well settled principle that no event or circumstance arising after the period of limitation can constitute sufficient case. Reference is made to the decision in **Ajit Singh Thakur Singh and Anr. –v- State of Gujarat AIR 1981 SC 733**

*“6. At the outset, it is urged by learned counsel for the appellants that the High Court erred in condoning the delay in filing the appeal, and the appeal should have been dismissed as barred by limitation. We have examined the facts carefully. It appears that initially the State Government took a decision not to file an appeal and it allowed the period of limitation to lapse. Subsequently, on certain observations made by the High Court while considering a revision petition by Bhulabhai that it was a fit case where the State Government should file an appeal and on notice being issued by the High Court to the State Government in the matter, the appeal was filed. It was filed three months after limitation had expired. A faint attempt was made to show that when the initial decision was taken not to file an appeal all the papers had not been considered by the department concerned, but we are not impressed by that allegation. The truth appears to be that the appeal was not filed at first because the State Government saw no case on the merits for an appeal, and it was filed only because the High Court had observed - and that was long after limitation had expired - that the case was fit for appeal by the State Government. Now, **it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient***

cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. **But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation.** In the present case, there was no such cause, and the High Court erred in condoning the delay.

- 5.6 There is no explanation or event or circumstance arising before the limitation expired or for that matter, any explanation for why the review petition was not filed even within the 60 days' time. There is no explanation for the delay in filing of the Review Petition.
- 5.7 The Appellant had not raised any issue on the Report of the District Magistrate to be sought for or to be required prior to passing the Impugned Order dated 16.03.2017. In fact, the Appellant had not attempted to produce any evidence to counter the contention of the Respondent No. 1. Nor did Appellant challenge the Order dated 16.03.2017 on the basis that it could not have been passed in absence of the Report of District Magistrate. The Report is not a necessary requirement for determination of tariff. In fact in usual course, such Reports are not called for and the decision is taken based on evidence produced by the Applicant seeking determination of tariff. Since the Appellant had not raised such issue in the Petition, the same cannot be raised in the Appeal and cannot be the basis for condonation of delay.

5.8 The Appellant has sought to rely on Order dated 21.08.2018 related to another Power Project as the basis for filing the Review Petition or this Appeal. A subsequent Order cannot be considered to challenge an earlier order. In this regard, the Appellant craves reference to the following decisions:

- a) Brijesh Kumar and Ors. -v- State of Haryana and Ors. 2014 11 SCC 351
- b) State of Karnataka v. S.M. Kotrayya, (1996) 6 SCC 267

5.9 The Appellant had not shown any diligence or effort to discover any documents or evidence. The Appellant has not shown that there was any evidence it could not have discovered even with diligence. In any event, it is submitted that the State Commission has passed the Impugned Order on the basis of information submitted by the Respondent as well as other authorities. The State Commission had not held in the Impugned Order that the report of District Magistrate is awaited and the Order passed would be reconsidered on that basis. The State Commission had considered the documents furnished by the Respondent as well as information received by the State Commission by other sources. The Appellant cannot seek to improve its case in the Appeal.

5.10 It is up to the Appellant to produce any document/evidence to contest the information/evidence submitted by the Respondent No. 1. The Appellant failed to produce any such evidence or even attempt to obtain such evidence. Even now, the Appellant has failed to produce any evidence. The Appellant is merely relying on another order passed by the State Commission. The Appellant cannot sit over its rights without demonstrating any diligence or effort and wait

for an order to be passed in another Petition and thereafter file an appeal based on such order.

5.11 Further even after such order dated 21.08.2018, the Appellant did not file the Review Petition immediately and took around three and half months to file the Review Petition before the State Commission. There is no explanation for the delay after 21.08.2018. The Appellant has not made any reference to the above period of more than three months between 21.08.2018 and filing of Review Petition on 05.12.2018.

5.12 Even after the dismissal of the Review Petition on 02.04.2019, the Appellant did not immediately file the Appeal and in fact did not even file the Appeal within 45 days from the Review Order dated 02.04.2019. The Appellant further delayed the appeal by more than 2 months after the Order dated 02.04.2019 and admittedly 21 days delay even considering the limitation period of 45 days from the Order dated 02.04.2019. The Appellant has vaguely stated that it had detailed discussions with its Counsel as the matter involved technical discussions. However, the Appellant has not provided any details of the dates of discussions, drafting of Appeal etc. In any case, this is not a satisfactory explanation as the 45 days to file an appeal is granted for such purpose, even for appeals against tariff orders involving technical issues.

5.13 The Appellant was aware that it was already delayed and should have acted diligently but chose to further delay the matter. Therefore, the Appellant has not shown bona fide and has been negligent.

- 5.14 The Answering Respondent would crave reference to the decision of the Hon'ble Tribunal dated 14.12.2018 in I.A. No. 1085 of 2018 in DFR No. 2307 of 2018 in Punjab Energy Development Agency v. Punjab State Electricity Regulatory Commission and Others.
- 5.15 Further the Hon'ble Tribunal in the case of Rajasthan Vidyut Prasaran Nigam Ltd v. Rajasthan Electricity Regulatory Commission dated 10.01.2014 in I A No. 416 of 2013 in DFR No. 2309 of 2013 has held that the time taken for opinion and drafting of appeal is not a sufficient cause for condonation of delay and further when there is delay even after receipt of the Review Order.

“8. The learned Counsel for the Applicant/Appellant reiterated the averments contained in the Application to condone the delay contending that some time was taken for getting the opinion from the Counsel and after that in drafting the Appeal. This explanation, in our view, would not be construed to be a sufficient cause shown to condone this inordinate delay.

9. As indicated above, even subsequent to the receipt of the Review Order on 16.8.2013; there was a further delay in filing the Appeal since the Appeal has been filed only on 22.10.2013.

10. The explanation given by the Applicant/Appellant that it took some time for getting the opinion and drafting the Appeal which ultimately was filed on 22.10.2013, cannot be accepted as a satisfactory explanation.

11. In the absence of any satisfactory explanation, we cannot brush aside the objections raised by the Respondent that there was a delay due to lack of bona fide and diligence on the part of the Applicant/Appellant.”

5.16 The Appellant has not shown any diligence on its part to ensure the filing of the Appeal urgently. In this regard, the Respondent No. 2 craves reference to the following decisions

- i. *Brijesh Kumar and Ors. -v- State of Haryana and Ors. AIR 2014 SC 1612*
- ii. *Basawaraj and Ors -v- The Spl. Land Acquisition Officer AIR 2014 SC 746*
- iii. *Vellaithai, K. Thnagavedivel and K. Valarmathi -v- V.Duraisami (2010) 1 MLJ1092*

5.17 In the circumstances, there is a clear lack of bonafide and negligence taken by the Appellant. On the principles laid by the Hon'ble Courts including this Hon'ble Tribunal as mentioned, the application deserves to be dismissed.

6. We have carefully considered the submissions/ rejoinder submissions made by the Learned Counsel appearing for the Applicant/Appellant and Learned Counsel appearing for the first Respondent and also taken note of the various authorities relied upon by the parties. The only point that arises for our consideration is whether the Applicant/Appellant has explained the delay in filing the instant Appeal satisfactorily and sufficient cause has been shown to be looked into in the instant case having regard to the facts and circumstances of the case as stated supra.

7. **OUR CONSIDERATION AND FINDINGS:-**

7.1 Learned counsel for the Applicant/Appellant submitted that the tariff petition dtd. 16.01.2015 was filed by the first Respondent for Sarju III Hydro Project which was decided by the tariff order dtd.

16.03.2017. He further submitted that the State Commission fully considering the claim of the Respondent that cloud burst in the vicinity of the project Sarju III delayed the execution of the project and 100% of the IDC incurred was allowed by the Commission. This order was passed by the Commission in the absence of any report received from the State Authorities i.e. District Magistrate which was received by the Commission only on 08.06.2017. Learned counsel was quick to submit that the State Commission subsequently decided the tariff petition dtd. 09.03.2017 of the first Respondent for Sarju II Hydro Project on 21.08.2018 and in the said tariff order, the Commission disallowed 50% of the IDC for the period of 48 months by placing reliance on the report of the District Magistrate relating to cloud burst. Learned counsel emphasized that in the said report of District Magistrate which was received by State Commission on 08.06.2017, it was clearly indicated that the loss was attributable for 2010 & 2012 but not for 2011 & 2013. Further, the Commission observed that the said report though prepared in relation to Sarju III project was relevant to Sarju II as well as two projects are located in the same area of proximity.

- 7.2 Advancing his arguments further, learned counsel for the Appellant contended that though the Tariff Order dated 16.03.2017 for Sarju III was pronounced on 16.03.2017, the error apparent in the said tariff order only became obvious much later, upon discovery of new evidence and materials. To be precise, it is only upon perusal of a subsequent order of the State Commission, i.e. the Tariff Order dated 21.08.2018 in respect of Sarju II, the unsustainability of Tariff Order dated 16.03.2017 for Sarju III became apparent. To further explain – a perusal of Tariff Order dated 21.08.2018 showed that in

ascertaining the veracity of Respondent's assertions as to delay occasioned by cloud-bursts, the Commission had relied upon the District Magistrate's Report dated 25.05.2017. By such reliance, the Commission had partly rejected Respondent's prayer for "interest during construction" (IDC) during the period of delay in completion of the project. The fact that the Commission had partly disbelieved the Respondent's assertions in respect of cloud-bursts for tariff determination of Sarju II (vide Tariff Order dated 21.08.2018), but wholly believed the very same assertions for Sarju III was irreconcilable. In the Appellant's understanding of the legal position, this was a good ground to revisit and review the tariff order of Sarju III. In this context, regard may be had to fact that the District Magistrate's Report dated 25.05.2017 had actually been furnished in relation to queries on delay of completion of Sarju III. However, the Tariff Order dated 16.03.2017 had been passed even before the said report had been furnished (this is apparent from the fact that the District Magistrate's Report is dated 25.05.2017). It was therefore Appellant's *bona fide* belief that the State Commission had acted with haste and in disregard of materials (that ought to have been awaited), in the determination of tariff qua Sarju III.

- 7.3 Regarding the maintainability of the Appeal, as alleged by the first Respondent, learned counsel for the Appellant placed reliance on Order 47 Rule 7 PPC and judgment of this Tribunal in VRL Logistics Ltd. Vs. Hubli Electric Supply Company dtd. 02.04.2014. Further, the assertion of the first Respondent that on account of the delay of 768 days in challenging the main order dtd. 16.03.2017 is unsustainable considering the fact that the Appellant has challenged the first impugned order dtd. 16.03.2017 by way of review. In fact,

it was not as if first Respondent was unaware of the facts that the Appellant was aggrieved by the said order and also the Appellant was taking recourse to remedies in law to upset that order.

- 7.4 Learned counsel for the Appellant relied upon several judgment of the Hon'ble Supreme Court to express the sufficient cause such as *State of W.B. v. Administrator, Howrah Municipality*, (1972) 1 SCC 366, *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123, *Ram Nath Sao v. Gobardhan Sao*, (2002) 3 SCC 195, *Collector (LA) v. Katiji*, (1987) 2 SCC 107, *State of Haryana v. Chandra Mani*, (1996) 3 SCC 132 and *State of Nagaland v. Lipok Ao*, (2005) 3 SCC 752.
- 7.5 Learned counsel for the Appellant vehemently submitted that the duty and responsibility of the Applicant, a State Govt. undertaking is to show that there was no negligence or inaction or want of bona fide. In fact, both the State Commission and the first Respondent have failed to properly appreciate the nature of Applicant's submission on the new and important evidence attracting review. The Appellant discovered these facts only by study and reference to the tariff order dtd. 21.08.2018. The discovery is subsequent and so also the means of discovery (tariff order dtd. 21.08.2018). This is not the same as a situation where the essential facts or circumstances warranting review have occurred subsequent to the main order. Learned counsel further clarified that the judgments lighted by the first respondent are distinguishable and inapplicable to the present case. Stating all these facts, learned counsel for the Appellant reiterated that the delay in filing the Appeal may be condoned by this Tribunal in the interest of justice and equity.

- 7.6 **Per contra**, learned counsel for the first Respondent submitted that at the outset the Appeal against Review order dtd. 02.04.2019 is not maintainable under Order 47 Rule 7 of the CPC as the State Commission has rejected the Review Petition on the grounds of limitations as well as on the merits. The Appellant has filed the present Appeal with considerable delay of 768 days' and in the meantime, a right has accrued to it to treat the main order as final and the first Respondent has planned on the basis of tariff determined by the impugned order. To substantiate his case, in this regard, learned counsel placed reliance on the judgment of Hon'ble Supreme Court in *Ramlal Motilal v. Rewa Coalfields*, (1962) 2 SCR 762.
- 7.7 Learned counsel for the first Respondent further submitted that no sufficient cause has been shown by the Applicant and therefore the delay cannot be condoned. He contended that the justification given by the Applicant is discovery of new evidence once the order dtd. 21.08.2018 was passed in respect of another project of the first Respondent. Further, the Applicant has been sought to rely on the filing of the Review Petition before the State Commission. However, it is pertinent to note that the delay in filing the Review Petition was not condoned by the State Commission. Learned counsel further highlighted that the Review Petition itself was filed with substantial delay i.e. nearly 21 months after the impugned order dtd.16.03.2017 was passed. Learned counsel brought out that in fact, the Review Petition was not even filed within the time stipulated under the UERC conduct of the Business Regulations which is 60 days as against 45 days for Appeal. Learned counsel stated that as per the second principles, no event or circumstances arises after the period

of limitation when constitute sufficient cause for which he placed reliance on the decision in *Ajit Singh Thakur Singh and another vs. State of Gujarat AIR 1981 SC 733* .

- 7.8 Learned counsel for the first Respondent highlighted that the Applicant has not raised any issue on the report of the District Magistrate to be sought for or to be required to prior to passing of the impugned order dtd. 16.03.2017. In fact, the Applicant have not tempted to produce any evidence to counter the contention of the first Respondent. In fact, the said Report is not an essential requirement for determination of tariff and in normal course such reports are not called for and the decision is taken based on the evidence produced by the Petitioner seeking determination of tariff. As the applicant had not raised such issue in the Petition, the same cannot be raised in the Appeal and cannot be basis for condonation of delay.
- 7.9 Learned counsel to emphasize that a subsequent order cannot be considered for challenging an earlier order, placed reliance on judgments of the Apex Court in *Brijesh Kumar and Ors. -v- State of Haryana and Ors. 2014 11 SCC 351* and *State of Karnataka v. S.M. Kotrayya, (1996) 6 SCC 267*.
- 7.10 Learned counsel further contended that the State Commission has passed the impugned order on the basis of the information submitted by the first Respondent as well as other authorities and there was no mention in the impugned order that the report of District Magistrate is awaited. It was up to the applicant to produce

any document or evidence to contest the information submitted by the first Respondent.

7.11 By relying another order passed by the State Commission, the Applicant cannot sit over the rights of the first Respondent without demonstrating any diligence or effort and wait for an order to be passed in another petition and thereafter filed an appeal based on such order. Learned counsel was quick to point out that the Applicant did not file the Review Petition immediately after the order dtd. 21.08.2018 and took around three and a half months to file the Review Petition before the State Commission. For this, there is no sufficient explanation by the Applicant. Learned counsel for the Respondent further pointed out that even after the dismissal of the Review Petition on 2.04.2019, the applicant did not immediately file the appeal within prescribed time limit of 45 days and further caused a delay of 21 days beyond 45 days.

7.12 Learned counsel for the first Respondent further submitted that the Applicant has failed to act diligently and has filed the Appeal in non-serious way resulting into delay of 768 days from the main order and 21 days from the Review Order and it has not shown bona fide. To contend that such delays has been caused due to negligence and cannot be condoned, learned counsel placed reliance on the decision of this Tribunal dtd. 14.12.2018 in the case of Punjab Energy Development Agency and Punjab State Electricity Regulatory Commission & Ors. Summing up his arguments and placing reliance on various judgments of Hon'ble Supreme Court and this tribunal, learned counsel for the first Respondent reiterated

that the delay in filing the Appeal should not be condoned and the application deserves to be dismissed.

OUR FINDINGS :-

7.13 We have critically analysed the submissions made by the learned counsel for the applicant and learned counsel for the first Respondent and also perused the text of various judgments relied upon by both the parties. It is not in dispute that the hydro projects referred to herein namely Sarju II & Sarju III are located in same vicinity and are governed by similar hydrological, geological and climatic conditions. The tariff order for Sarju III Hydro Project was passed on 16.03.2017 and that for Sarju II on 21.08.2018. The dispute herein relates to occurrence of force majeure conditions due to cloud burst in the area and consideration of interest during construction. While the impugned order dtd. 16.03.2017 was passed without any report of the State Authorities relating to cloud burst and subsequent damages thereof, the tariff order for Sarju II was passed on 21.08.2018 considering the detailed report of the District Magistrate which indicated less period of force majeure and accordingly the State Commission allowed only 50% of the IDC in Sarju II Project claimed by the first Respondent. Just to remention, the IDC in case of Sarju III project was allowed to be 100% of the claimed IDC.

7.14 After the impugned order dtd.21.08.2018 for the Sarju II Hydro Project, the Applicant came to know that for the same period and the same cloud burst damages, the State Commission has allowed different percentage of IDCs (100% for Sarju III and 50% for Sarju

II). This was an apparent error in the impugned order dated 16.03.2017 passed by the State Commission without any report from the State Govt. and accordingly the Applicant filed Review Petition which was rejected on 02.04.2019. This has been considered as a new evidence for challenging the main order along with the Review order and in the process, there have been delays of 768 days and 21 days respectively. On these grounds, the Appellant has sought for condonation of delay in the interest of justice and equity.

7.15 Learned counsel appearing for first Respondent has filed a detailed reply and submissions to the Application filed by the Applicant/Appellant seeking condonation of delay in filing the Appeal contending that there is an unexplained delay in filing the present appeal. The learned counsel appearing for the Applicant has submitted that the delay in filing has been explained satisfactorily and due to these reasons, such delay has been caused which is bona fide, unintentional and is liable to be condoned in the interest of justice. Learned counsel for the Applicant contended that the balance of convenience lies in favour of the Applicant and if the delay is not condoned, the consumer of the state will be unnecessarily burdened and hence it will be in the interest of justice that delay may be condoned.

7.16 Even though delay has been explained hereinabove, it is a settled principle of law that the meaning of "Several days' delay must be explained", is not to be construed and applied liberally and the Tribunal ought to have applied the law in a meaningful manner which would subserve the common ends of justice and equity. The

term “sufficient cause” as implied by the legislature ought to be interpreted in the true spirit and philosophy of law. The Apex Court in catena of judgments has laid down and reiterated the principles pertaining to the condonation of delay in number of its judgments. It is significant to note that it is worthwhile to refer to a few of the judgments regarding well-settled law laid down for condoning the delay in filing the Appeal which reads as hereinunder :-

Collector, Land Acquisition, Anantnag & Anr. vs. Mst Katiki & Ors. (1987) 2 SCC 107, wherein it is held that 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 live purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court.

7.17 This Tribunal reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. 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 vested right in injustice being done because of a non-deliberate delay. 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. Judiciary is not respected on account of its power to legalise 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.

7.18 Further, it is noteworthy to place reliance on the Judgment of the Supreme Court in (1996) 3 SCC 132 as held in para 11, which reads as hereinunder :

“11. -It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community.”

(Emphasis supplied)

7.19 In the case of “State of Nagaland v. Lipok AO and Others as reported in “(2005) 3 SCC 752” in para 15 it is held as under :-

“15. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on 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 is 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 justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay".

(Emphasis supplied)

7.20 Taking into consideration the facts and circumstances of the case and the law laid down by the Apex Court and this Court in host of judgments, the instant application filed by the applicant/appellant is liable to succeed by condoning the delay in filing the Appeal in the interest of justice and equity. The fact that it was the UPCL which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the Applicant/Appellant. The balance of convenience lies in favour of the Applicant/Appellant as if the delay is not condoned, the consumer will unnecessarily be burdened. Hence, we are of the considered view that it will be in the interest of justice and equity that the delay be condoned. The Appellant/Applicant hereby declares that nothing material has been concealed or suppressed.

7.21 The learned counsel appearing for the Respondent No. 1, has taken us through the reply filed by him and pointed out that the application filed is misconceived as huge delay has not been explained properly and sufficient cause has not been shown. This is nothing but an abuse of the process of the court. Such a submission may not be appropriate for consideration by us in the instant case taking into

consideration that, the counsel appearing for the Respondent No. 1 is defending the case of the generator at the cost of the interest of the common consumer of the State and keeping in view the interest of the consumers of the State at large, we opine that otherwise the same will set a wrong precedent and affect the interest of the innocent and illiterate consumers for no fault on their part. Therefore, we are of the considered view that the contention of the counsel appearing for the Respondent No. 1 may not be acceptable having regard to the peculiar facts and circumstances of the case in hand.

- 7.22 Taking all these relevant factors into consideration and specifically keeping in view the interest of consumers, we thought it fit having regard to the facts and circumstances of the case as sated supra, that the delay in filing has been explained satisfactorily and sufficient cause has been made out, the same is accepted and the delay in filing is condoned and the objection raised by the Respondent No. 1 in its reply is not a sufficient ground and is not acceptable for not condoning the delay in filing the appeal as made out by the Appellant/Applicant. Taking all these factors into consideration, as stated supra, it would be just and suffice for this Tribunal to impose some reasonable cost by way of compensation to meet the ends of justice.
8. For the foregoing reasons as stated above, the instant application filed by the Applicant/Appellant is allowed, the delay in filing is condoned and the IA stands disposed of.

8.1 The Applicant/Appellant is hereby directed to deposit a sum of Rs. 50,000/- in the Defence Organisation named "National Defence Fund, PAN No. AAAGN0009F, Collection A/c No. 11084239799 with State Bank of India, Institutional Division, 4th Floor, Parliament Street, New Delhi, within a period of four weeks from the date of the receipt of a copy of this Order.

Pronounced in the Virtual Court on this 24th Day of July, 2020.

Registry is directed to number the Appeal and list the matter for admission on **07.09.2020. (through video conferencing)**

**(S. D. Dubey)
Technical Member**

**(Justice Manjula Chellur)
Chairperson**

pr