

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

**IA No.11 OF 2014**  
**IN**  
**DFR No.2691 OF 2013**

**Dated:3<sup>rd</sup> April, 2014**

**Present:**

**HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON**  
**HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**In the Matter of:**

**Delhi International Airport Private Limited**  
**New Udaan Bhawan,**  
**Terminal-3,**  
**Indira Gandhi International Airport,**  
**New Delhi-110 037**

**...Appellant/Applicant**

**Versus**

- 1. Delhi Electricity Regulatory Commission,**  
**Viniyamak Bhawan,**  
**'C'Block, Shivalik,**  
**Malviya Nagar,**  
**New Delhi-110 017**
- 2. BSES Rajdhani Power Limited**  
**BSES Bhawan,**  
**Nehru Place,**  
**New Delhi-110 019**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. Atul Sharma  
Mr. G Sharma  
Mr. Sarojanand Jha  
Ms. Isha J Kumar  
Mr. Milanka Chaudhury

Counsel for the Respondent(s): Mr. Sharad Kumar Srivastava  
Mr. Manu Seshadri for R-1  
Mr. Hasan Murtaza for R-2

## **ORDER**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON**

1. This is an Application filed by the Delhi International Airport Private Limited to condone the delay of 75 days in filing the Appeal as against the Impugned Order dated 31.7.2013.
2. The learned Counsel has offered the explanation for the delay through the Affidavit dated 28.11.2013 and the Additional Affidavit dated 27.1.2014 as well as the detailed Additional dated 10.3.2014. The said explanation is as follows:

“(a) The Tariff Order was passed on 31.7.2013 by the Delhi Electricity Regulatory Commission in the Application filed by the BSES Rajdhani Power Limited for the approval of True-UP for Financial year 2012-13, Review and Provisional True Up for Financial Year

2012-13 and Annual Revenue Requirement for the Distribution Business for the Financial year 2013-14.

(b) In this Order, the Delhi Commission continued to treat the Appellant namely Delhi International Airport Private Limited in a separate category by applying the tariff similar to the non-domestic HT.

(c) Even though the Appellant actively participated in the proceedings initiated by the Delhi Commission by filing objections and addressed the submissions during the public hearing, the Delhi Commission passed the Impugned Order dated 31.7.2013 without considering those objections.

(d) Although the Impugned Order was passed on 31.7.2013, the certified copy of the Order issued by the Delhi Commission was received by the Appellant only on 21.11.2013 that too on receipt of the letter sent by the Appellant on 18.11.2013 to the State Commission.

(e) Thus, the Delhi Commission did not communicate the Appellant about the Impugned Order immediately by supplying the copy of the order to the Appellant free of cost despite the fact that the Appellant was a party to the proceedings which participated in the proceedings.

(f) As per Regulation 24 notified by the Delhi Commission, it is mandatory for the Delhi Commission to supply and communicate the final order to the parties free of cost.

(g) U/S 64 (4) of the Act, the Commission shall within 7 days of making the order, send a copy of the Order to the persons concerned.

(h) Section 111 (2) of the Act provides that the person aggrieved, shall file an Appeal within a period of 45 days from the date on which the copy of the Order was received by the aggrieved person.

(i) In this case, the copy of the order which had been passed on 31.7.2013, was sent and received only on 21.11.2013 by the Appellant within a week thereafter, the Appeal has been filed on 28.11.2013. As such, there was no delay in filing the Appeal but out of abundant caution, this Application has been filed for condonation of 75 days from the date of the knowledge of the Order.

(j) Since there was a delay in sending the copy of the Order on the part of the Delhi Commission, the delay in filing the Appeal cannot be attributed to the

Appellant. Therefore, the delay in filing the Appeal may be condoned”.

3. In this Application, we have issued notice to the Respondents.
4. The Respondents appeared before the Tribunal and vehemently opposed the Application to condone the delay on the ground that the Impugned Order had been passed as early as on 31.7.2013 and on the basis of the Impugned Order, the bill was issued by the Respondent which has been received in the month of August, 2013 itself by the Appellant and on receipt of the bill, the Applicant has paid the bill amount without any protest and therefore, the Applicant which came to know about the order in the month of August itself, had not chosen to file the Appeal immediately and in the absence of any explanation for the delay from August to November, 2013, the delay may not be condoned.
5. In the light of the said objection by the Respondents we have given opportunity to the Appellant/Applicant to file the additional detailed Affidavit giving the explanation for the said period of delay. Accordingly, the Appellant has filed two Affidavits i.e. on 27.1.2014 and the other on 10.3.2014.

6. The main contention in the Additional Affidavit is that the delay was caused because of the delay in despatch of the Order copy by the Delhi Commission and as such, the said delay was not due to the inaction of the Appellant but because of the delay caused by the Delhi Commission and therefore, it may be condoned.
7. The Respondents filed a Counter on 11.3.2014 opposing the Applicant to condone the delay of 75 days mainly on the ground that subsequent to the Order dated 31.7.2013, the Respondent issued public notices in several newspapers both on 31.7.2013 and 1.8.2013 informing the public including the Appellant about the new schedule of tariff approved by the Delhi Commission and as such, the Appellant therefore had actual and constructive knowledge of the order as early as in July and August itself.
8. The Respondent further contended that the Appellant received the Bill issued by the Respondent for the month of August as per the Impugned Order and the said Bill contained the category of the Applicant as per the Applicable tariff and having known about the Order, the Appellant has paid the entire bill amount within due date without any protests by the Appellant and therefore, the Appellant had full knowledge of the revised tariff from August, 2013 itself.

9. According to the Respondent, the substantial delay which has been caused in filing the Appeal on 28.11.2013 has been caused by the Appellant due to negligence of the Appellant and that therefore, the Application to condone the delay deserves to be dismissed.
10. We have carefully considered the submissions made by both the parties.
11. According to the Appellant/Applicant, as per the Regulations and provisions of the Act and as per the Orders of this Tribunal in DFR No.1229 of 2012, the date has to be reckoned from the date of communication of the Order i.e. on 21.11.2013 and therefore, there was no delay subsequent to the receipt of the Order as the Appeal has been filed on 28.11.2013 itself and even assumed that if there is some delay, the same may be condoned as the delay was only due to the belated despatch of the Order copy by the Delhi Commission.
12. It is true that the order copy has not been despatched by the Delhi Commission immediately after the order was passed on 31.7.2013. It is also true that the copy of the Order was received by the Appellant/Applicant only on 21.11.2013.
13. But, it is to be noticed as pointed out by the learned Counsel for the Respondents that the Appellant has received the Bill

issued by the Respondent indicating the tariff order in the month of August, 2013 itself and the said Bill amount also was paid by the Appellant in the month of August, 2013 itself.

14. Admittedly, the Bill contained the particulars of the category of the Appellant belonging to the applicable tariff. Thus, the Applicant had the full knowledge of the revised tariff through the bills which have been communicated to the Appellant/Applicant in the month of August, 2013 itself. Therefore, the Appellant is bound to explain the period of delay between the date of the receipt of the bill and the date of the filing of the Appeal.
15. There is no dispute in the fact that the bill was received in August, 2013 and the same had been paid without any delay after knowing about the revised tariff.
16. It may be a default on the part of the Delhi Commission that the order copy was not sent to the Appellant in time. But it is to be noted that the Appellant had full knowledge about the revised tariff through receipt of the bill in August, 2013 itself.
17. Even according to the Appellant, the Appellant sent a letter requesting for the Order only on 18.11.2013 and not in the month of August itself. There is no reason given by the Appellant as to why the Appellant had not chosen to send a

letter requesting for the copy of the Order during the period between August and November, 2013.

18. It is pointed out by the learned Counsel for the Respondent that in response to the letter dated 18.11.2013 sent by the Appellant the order copy has been sent by the Delhi Commission immediately without any further delay which has been received by the Applicant on 21.11.2013 itself. Only, thereafter, the Appeal has been filed on 28.11.2013.
19. It is a fact that this Tribunal passed the Order in DFR No.1229 of 2012 to the effect that the limitation period starts from the date on which the Appellant received the certified copy of the Impugned order who was the party to the proceedings. But, in the present case, the Appellant has been communicated through the Bill about the nature of the order as early as in August, 2013. As mentioned earlier, the Bill amount also has been paid by the Applicant on the basis of the revised tariff. Further, the Respondent had also issued public notice in several newspapers on 31.7.2013 and 1.8.2013 informing the public about the new schedule of tariff approved by the Delhi Commission by the Impugned Order.
20. Despite this, the Appellant has not taken any steps to get the copy of the Order from the Delhi Commission to enable it to

rush to the Tribunal by filing the Appeal. Admittedly, there is no explanation for the period between the date of the receipt of the bill in August, 2013 and the date of the letter sent by the Appellant requesting for the copy of the order i.e. 18.11.2013.

21. It is also noticed that the tariff period itself is likely to be completed in the near future. Therefore, in the absence of the valid explanation for the period between the date of the communication, the date of knowledge of the order through the Bill and the date of the letter sent to the Delhi Commission for copy of the Order, we are not inclined to condone the delay of 75 days.
22. As pointed out by the learned Counsel for the Respondent, this Tribunal has taken of the ratio decided by the Hon'ble Supreme court that the knowledge of the party affected by the Impugned Order is an essential element for consideration of the condonation of the delay in the Order passed in DFR 1229 of 2012.
23. The ratio decided by the Hon'ble Supreme Court is that the words "the date of the Impugned Order must be construed to be the date of communication or knowledge of the Order".

24. In view of the above, we do not find sufficient reason to condone the delay caused in the absence of sufficient cause shown by the Appellant/Applicant in their explanation.
25. Hence, the Application to condone the delay is dismissed.
26. Consequently, the Appeal is also rejected. However, this Order would not debar the Appellant from raising the grounds of the Appeal in the tariff proceedings for the next year.

**(Rakesh Nath)**  
**Technical Member**  
Dated: 3<sup>rd</sup> April, 2014

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

✓ ~~REPORTABLE/NON-REPORTABLE~~