Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:15th Sept'2014
Present:
HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

IA No.276 OF 2014
IN
DFR No.1579 OF 2014

Coastal Gujarat Power Limited
C/o the Tata Power Company Limited,
4, Sant Tuka Ram Road, Carmac Bunder,
Mumbai-400 021

... Appellant/Applicant

Versus

1. **The Central Electricity Regulatory Commission**
   3rd & 4th Floor, Chanderlok Building,
   36, Janpath, New Delhi-110 001

2. **Gujarat Urja Vikas Nigam Limited**
   Sardar Patel Vidyut Bhawan
   Race Course, Vadodara-390 007

3. **Maharashtra State Electricity Distribution Company Ltd**
   "Prakashgad", Bandra (East),
   Mumbai-400 051

4. **Ajmer Vidyut Vitran Nigam Ltd.,**
   Old Power House, Hathi Bhata,
   Jaipur Road, Ajmer-305 001

5. **Jaipur Vidyut Vitran Nigam Ltd**
   Vidyut Bhawan, Janpath
   Jaipur-302 005

6. **Jodhpur Vidyut Vitran Nigam Ltd.,**
   New Power House, Industrial Area
   Jodhpur-342 003

7. **Punjab State Power Corporation Ltd.,**
   The Mall, Patiala-147 001

8. **Uttar Haryana Bijli Vitran Nigam Ltd**
   Vidyut Sadan, Plot No.C-16, Sector-6,
   Panchkula, Haryana-134 112

9. **Dakshin Haryana Bijli Vitran Nigam Ltd**
   Vidyut Nagar, Vidyut Sadan,
   Hissar, Haryana-125 005

10. **Union of India**
    Through Secretary
    Ministry of Power,
    Sharm Shakti Bhawan,
    New Delhi-110 001

11. **Prayas Energy Group**
    Athawale Corner, Karve Road,
    Deccan Gymkhana,

Pune-411 004
Maharashtra, India
Panchkula, Haryana-134 112

……Respondent(s)

Counsel for the Appellant(s) : Mr.Amit Kapur
Mr. Apoorva Misra
Mr. Akshat Jain
Mr. Abhishek Munot

Counsel for the Respondent(s) :Mr. Anand K Ganesan
Ms. Swapna Seshadri For R-2,4, & 7
Mr. M G Ramachandran
Ms. Anushree Bardhan for R-8 and R-9

O R D E R

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

1. Coastal Gujarat Power Limited, the Applicant has filed this Application to condone the delay of 374 days in filing the Appeal.

2. Aggrieved by the Impugned Order dated 15.4.2013 passed by the Central Regualtory Commission rendering certain negative findings in regard to the issues raised by the Applicant before the Central Commission, the Applicant has filed this Appeal.

3. Though the Impugned Order was passed on 15.4.2013, the Appeal has been filed only on 16.6.2014 and as such there was a long delay in filing the Appeal. Hence, the Applicant filed this Application in IA No.276 of 2014 to condone the delay of 374 days in filing the Appeal as against the Impugned Order dated 15.4.2013.

4. The Respondents have raised serious objections for the condonation of delay not only on the ground that the explanation given for this inordinate delay of 374 days was not satisfactory but also on the ground that the Applicant earlier accepted the said order and acted upon the same, after deciding not to file the Appeal against that order, but after a long time, the Applicant has now decided to file this Appeal that too subsequent to the 2nd order passed by the Central Commission relating to the compensatory tariff which are challenged by the other parties in various Appeals and as such the enormous delay without “sufficient cause” should not be condoned.

5. It is settled law that unless sufficient cause is shown for the period of delay, the said delay cannot be condoned by the Legal Forum irrespective of number of day’s delay.

6. In the light of the above legal position, we have to consider the validity of the explanation given by the Applicant for the delay of 374 days in filing the Appeal as against the Impugned Order dated 15.4.2013.

7. Accordingly, we shall now refer to the explanation offered by the Applicant in the Application to condone the delay as well as in the written notes filed by the Applicant in order to find out whether any sufficient cause has been shown.

8. The crux of the facts and explanation as narrated in the Application to condone the delay is as follows:

(a) The Applicant is a Generating Company engaged in developing, implementing and operating India's first Ultra Mega Power Project of 4000 MW to be based on imported coal which was awarded through tariff based competitive bidding.

(b) The Central Commission is the First Respondent. The Respeondents-2 to 8 are the procurers of the power from the project who have entered into a PPA with the Applicant, the Generating Company.

(c) The Central Commission passed the Order u/s 63 of the Electricity Act, 2003 for adopting the tariff for supply of electricity from the project of the Applicant discovered through the competitive bidding.

(d) Accordingly, various Agreements were entered into between the Applicant and the procurers of various States.

(e) The Kaltim Prima Coal (KPC) holds the contract of work with the Government of Indonesia since the year 1982. KPC was responsible for ultimate sale to the customers of coal products as per the terms and conditions of the KPC Coal Contract of work.

(f) Due to certain unforeseen events, there was an uncontrollable increase in the cost of generation of power on account of the fact that the sale of coal at pre-requisite contractual arrangements was prohibited in view of the enactment of Indonesian Regualtions. The implication of the Indonesian Regulation was that the Applicant could not procure the imported coal at the contracted price but was forced to procure coal at the market rate which was higher than the contracted price.

(g) Due to these subsequent unforeseen events, it had become commercially impractical for the Applicant to supply power at the bid out tariff and hence the Applicant was constrained to file the Petition before the Central Commission praying for establishing an appropriate mechanism to offset in tariff the adverse impact of the escalation in the imported coal price due to the ‘Change in Law’ by the Government of Indonesia and ‘Force Majeure’.

(h) The Central Commission after hearing the parties, passed the Impugned Order dated 15.4.2013 rejecting the submissions of the Appellant by holding that the subsequent events would not qualify as a 'Force Majeure' or 'Change in Law'. However, it decided to grant the relief to the Applicant by allowing the compensatory tariff to the Applicant i.e. over and above the PPA tariff.

(i) On that basis, the Central Commission directed the parties to set out to a consultative process to find out an amicable solution in the form of compensatory tariff over and above the tariff agreed under the PPA in order to mitigate the hardship arising out of the need to import the coal at the prevailing market price. Accordingly, the Applicant and the procurer were directed to constitute a committee consisting of their respective representatives and the said committee was directed to get into the impact of the price escalation of Indonesian coal and suggest a package for compensatory tariff to enable the Central Commission to pass a final order.

(j) In pursuance of the said directions, the Committee was duly constituted. After deliberations, the Committee gave its report to the Commission on

16.8.2013. On the basis of the report, the Central Commission passed final order dated 21.2.2014 determining the formula to compute the compensatory tariff to be granted to the Applicant.

(k) Since all the parties concerned participated in the proceedings before the Committee to arrive at an amicable solution after the impugned Order dated 15.4.2013 was passed, the Applicant waited for the final report so that the Applicant will get a final solution. Initially, it did not choose to file the Appeal against the said order dated 15.4.2013 in view of the fact that filing the Appeal against the Impugned Order at that time would have derailed the entire process of finding out a solution to compensate the Applicant for the hardship caused to it by the promulgations of the Indonesian Regulations.

(l) In spite of the fact that the final order dated 21.2.2014 was passed by the Central Commission on the basis of the report with suggestions filed by the Committee, the procurers, the Respondents have filed various Appeals before this Tribunal against the said order and the same were admitted by this Tribunal.

(m) Since an amicable solution was not arrived at and the other parties have resorted to the filing of the

Appeals against the final order dated 21.2.2014, the Applicant has now felt the necessity to file the Appeal as against the Original Order dated 15.4.2013 in which the claim of the Applicant with regard to the 'Force Majuere' and 'Change of Law' was rejected.

(n) Thus, the delay in filing the Appeal which is neither intentional nor deliberate is bona fide and for a sufficient cause.

(o) The delay could be evaluated with reference to two phases. The Impugned Order which was passed on 15.4.2013 was received on 22.4.2013. The statutory period of 45 days would end on 6.6.2013. As per the practice the period during vacation of the Court is allowed to be deducted. As such, the due date for filing the Appeal then would be on 1.7.2013, the date of reopening of the Tribunal. Thus, the first phase of delay commenced only from 1.7.2013 till 21.2.2014 i.e. the date of 2nd order determining the compensatory tariff on the basis of the Report of the committee. Then, the second phase of delay commences w.e.f 21.2.2014, the date of second order till 16.6.2014 the date of filing of the present Appeal.

(p) As far as the first phase is concerned the said period cannot be termed as a deliberate delay as

vacation period intervened. In so far as the 2nd phase is concerned, the Applicant was hopeful of a final resolution. The Central Commisison had passed the 2nd order dated 21.2.2014 after hearing the parties at length. After having considered the submissions of both the parties, the Central Commission had actually reduced the level of compensation package. Therefore, the Applicant thought that the problem would be solved by the said order dated 21.2.2014 which was passed in favour of both the parties. But, the procurers, the Respondents had change of heart in arriving at an amicable solution and filed the Appeals as against the 2nd order dated 21.2.2014. Hence, the Applicant also has decided to file the Appeal as against the 1st order dated 15.4.2013.

(q) As a matter of fact, the Impugned Order dated 15.4.2013 is already challenged by the Haryana Procurers before this Tribunal in Appeal No.151 of 2013 which is pending. Therefore, by condonation of the delay in this Appeal and admitting the Appeal as against the same Impugned Order, no pre-judice will be caused to any party. Hence, in the interest of justice, the delay may be condoned".

9. This Application to condone the delay is vehemently and stoutly opposed by the Respondents on the following grounds:

(a) The Applicant was clearly aware of the decision of the Central Commission on the aspect of rejection of the claims of the Applicant relating to the 'Force Majeure' and 'Change in Law' by the Impugned Order dated 15.4.2013. The Applicant thereafter, decided to proceed with the implementation of the said order dated 15.4.2013 after deciding not to challenge the said order on the aspect of Force Majeure and Change in Law. Thus, the Applicant fully accepted the decision taken by the Central Commission in the Order dated 15.4.2013 and proceeded with the deliberations in the Committee in terms of the directions issued in the Order dated 15.4.2013. This would prove that the Applicant consciously decided not to challenge the Order dated 15.4.2013 as admitted by the Applicant itself that it was hopeful of substantial relief from all procurers on the aspects of compensatory tariff by way of settlement proceedings.

(b) Now the Applicant cannot change its decision to file the Appeal against the Impugned Order dated 15.4.2013 that too after the 2nd order was passed by

the Central Commission on 21.2.2014 determining the compensatory tariff.

(c) Immediately after the Impugned Order was passed on 15.4.2013, the Haryana Utilities filed Appeal No.151 of 2013 as early as on 27.6.2013 in so far as it deals with the exercise of the regulatory powers to appoint the Committee for considering the compensatory tariff. The Applicant at that stage itself would have filed the Appeal against the Impugned Order dated 15.4.2013 which had been challenged by the Haryana Utilities. Instead of filing the Appeal at that stage, the Applicant on the other hand accepted and acted upon the said order dated 15.4.2013.

(d) Thus, Applicant elected to accept the said order and to proceed with the implementation of the said order. In view of the above, it is clear that the Applicant accepted the Impugned Order and proceeded unconditionally and without demur with its implementation without taking any step to challenge the Impugned Order at the relevant time.

(e) This conduct on the part of the Applicant would show that there is a clear lack of bona fide and lack of diligence in not filing the Appeal as against the Order dated 15.4.2013 at that stage itself even though there was a specific finding rendered by the Central Commission

rejecting the claims of the Applicant for 'Force Majeure' and 'Change in Law'.

(f) Hence, the explanation given by the Applicant is not only not satisfactory but also it suffers from lack of bona fide".

10. Both the parties have cited various authorities in the matter of condonation of delay.

11. The Applicant has cited the following authorities:

(a) (1998) 7 SCC 123 Balakrishanan Vs M Krishna Murthy;

(b) Appeal No.160 of 2013 dated 1.7.2014 in the case of GRIDCO Limited Vs Bhushan Power & Steel Limited;

(c) IA No.124 of 2014 in DFR No.279 of 2014 dated 29.5.2014 in the case of Power Company of Karnataka Limited Vs Himatsingka Seide Ltd Vs M/s. J K Cement Works;

(d) (20111) 14 Supreme Court Cases 86 in the case of B T Purushotham Rai Vs K G Uthaya and Ors

12. The principles laid down in the above decisions are as follows:

(a) Condonation of delay is a matter of discretion of the Court wherein the only criteria is the sufficiency of the cause. The length of delay is no matter. Acceptability of the explanation is only criterion.

(b) The rules of Limitations are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

(c) The Court knows that refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that the delay in approaching the court is always deliberate. The words "sufficient cause" should receive a liberal construction so as to advance substantial justice.

(d) The test of sufficiency of cause is that the party seeking such condonation should not have acted mala fide or adopted dilatory tactics or should not be guilty of total in action. The primary function of Courts is to adjudicate the dispute between the parties in order to advance substantial justice.

(e) In case a party is found to have acted mala fide or purely in a dilatory manner, Courts may decline to exercise their positive discretion to condone the delay.

13. The Respondents, the procurers has cited the following authorities:

(a) Brijesh Kuamr and Ors Vs State of Haryana and Ors AIR 2014 SC 1612;

(b) Baswaraj and Ors Vs the Spl Land Acquisition Officer AIR 2014 sc 746

(c) Pundlik Jalam Patil v Executive Engineer, Jalgaon Medium Project and Another 2008 (17) SCC 448;

(d) Ajit Singh Thakur Singh and Anr Vs State of Gujarat AIR 1981 sc 733;

(e) Vellaithai, K Thnagavedivel and K Valarmathi Vs V Duraisami (2010) 1 MLJ 1092;

(f) Appeal No.77 of 2009 dated 22.2.2012 in the case of Gujarat Urja Vikas Nigam Ltd Vs Essar Power Limited

(g) IA No.189 of 2012 in DFR No.665 of 2012 dated 14.8.2012 in the case of Ind Bharat Power (Madras) Ltd Vs Power Grid Corporation of India

(h) IA No.416 of 2013 in DFR No.2309 of 2013 dated 10.1.2014 in the case of Rajasthan Vidyut Prasaran Nigam Limited Vs Sree Cement Limited

14. The gist of the guidelines given by the Hon'ble Supreme Court as well as this Tribunal are as follows:

(a) Law of limitation may harshly affect a particular party but it has to be applied with its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

(b) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration in the matter of condonation of delay. Though the Courts should not adopt an injustice oriented approach in rejecting the application for condonation of delay, the Courts while allowing such application has to draw distinction between the delay and in ordinate delay for want of bona fide of an inaction or

negligence which would deprive a party of the protection under the Limitation Act.

(c) When the delay is not satisfactorily and convincingly explained, the Court cannot condone the delay on sympathetic grounds alone.

(d) The expression "sufficient cause" of course should be given liberal interpretation, but only so long as negligence, in action or lack of bona fides is not be imputed to the party concerned.

(e) The law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The delay should not be attributable to negligence, in action or want of bona fide on the part of the defaulting party. In other words, if there is material to indicate the party's negligence in not taking necessary steps, which would have or should have taken the rule of liberal approach to such a party, the period cannot be extended.

15. In the light of the guidelines and principles laid down as referred to above, we shall now consider the question as

to "**Whether in the present Application there is any prima facie case to show that there is sufficient cause to condone the delay of 374 days?**"

16. The primary explanation given by the Applicant for this inordinate delay of 374 days is that after the Impugned Order that was passed on 15.4.2013 rejecting their claims with regard to the Force Majeure and Change of Law, the Applicant did not chose to file the Appeal against the Order dated 15.4.2013 since both the parties have acted upon the Order dated 15.4.2013 by actively participating in the proceedings before the Committee to set out a consultative process for finding a solution in the form of a compensatory package and as such, the Applicant was hopeful of a final resolution before the Central Commission after receipt of the Committee's Report and once the procurers had a change of heart on arriving at a solution and the procurers did not incline to resolve the matter even though they had earlier agreed for the amicable solution and chose to file the Appeals, the Appellant has now been constrained to file this Appeal belatedly as against the Impugned Order dated 15.4.2013 and as such there was no intentional delay.

17. We shall now deal with the explanation to find out whether this explanation is satisfactory which would show

sufficient cause so as to enable this Tribunal to condone the delay of 374 days.

18. Admittedly, the Impugned Order was passed on 15.4.2013 rejecting the claims of the Appellant for 'Force Majeure' and 'Change in Law'. The Applicant thus became the aggrieved party over the said rejection at that stage itself. Even then, the applicant did not choose to file the Appeal.

19. On the other hand, the Applicant proceeded to act upon the said order by accepting the same unconditionally and actively participated in the implementation of the said order by appearing before the Committee. In that order, as indicated above, even though it rejected the claims of the Applicant with regard to the 'Force Majeure' and 'Change in Law', the Central Commission exercised its regulatory powers to consider the compensatory tariff and directed for the constitution of the Committee and called for the Reports from them to determine the quantum of compensatory tariff. Admittedly, as against this portion of the Order dated 15.4.2013, the Haryana Utilities already filed the Appeal in Appeal No.151 of 2013 on 27.6.2013 with reference to the exercise of the regulatory powers of the Central Commission for considering for the grant of compensatory tariff.

20. In that Appeal No.151 of 2013, the Haryana Utilities filed IA No.220 of 2013 seeking for the permission to participate in

the proceedings before the Committee to be constituted as per the Impugned Order dated 15.4.2013 without prejudice to their rights and contentions raised in this Appeal. It is now contended by the Applicant that the procurers especially Haryana Utilities had agreed to settle the matter amicably and later changed their heart to go back from their stand which had led the Applicant not to file the Appeal in time.

21. This contention is without any basis.

22. Even according to the Applicant, as admitted by them, they earlier decided not to challenge the Impugned Order dated 15.4.2013. This admission has been referred to in Para-12 of the Application. The same is as under:

> *"It is submitted that filing of an Appeal at the time would have derailed the entire process of finding out a solution to compensate the Applicant for the hardship caused to it by the promulgation of Indonesian Regualtions. Time was of the utmost essence for the Applicant as the Applicant was suffering from huge losses on day to day basis and it would have become difficult for the Applicant to meet its operational expenses. Therefore, the Applicant could have let the entire consultative process derail more particularly when the Procurers had actively participated to find a solution to offset the impact of the Indonesian Regualtions."*

23. The above statement would clearly show that the Appellant initially decided consciously not to challenge the Order dated

15.4.2013. The reasons now alleged is that if they challenged that said order in the Appeal at that stage, it would derail the process of finding out a solution before arriving at decision between the parties. This reasoning is not only incorrect because the Haryana Utilities had filed an Appeal against the Order dated 15.4.2013, immediately thereafter but, also due to the fact that the decision taken at that stage not to file the Appeal against the Impugned Order dated 15.4.2013 in spite of the fact that the Applicant's claim were rejected thereby it became aggrieved.

24. Now the present stand with regard to decision taken to file the Appeal now, is quite contrary to the earlier stand taken by them earlier. Not only that, the reasons for taking different stand also as mentioned earlier is factually incorrect in view of the fact the other party namely Haryana Power Utilities already filed the Appeal in Appeal No.151 of 2013 challenging the very same order with a permission to participate in the proceedings before the Committee without prejudice to their rights and contentions.

25. Once the order is challenged in regard to one portion by which the Haryana Utilities is aggrieved in Appeal No.151 of 2013, the Applicant also must have filed the Appeal at that stage itself challenging the other portion of the Impugned Order dated 15.4.2013 rejecting the claims of the Applicant.

In that Appeal, the Applicant could have obtained the permission from this Tribunal to participate in the proceedings without prejudice to their rights and contentions raised in that Appeal with regard to the rejection of their claims relating to the Force Majeure and Change in Law.

26. This was not done. Why ? There is no explanation for the same.

27. According to the Applicant, there are two phases of delay:

(a) The fist phase of delay for one period is due to the interference of the vacation. The order passed on 15.4.2013 was received by the Applicant on 22.4.2013. The statutory period of 45 days would expire on 6.6.2013. In that period, the vacation period had already commenced. If vacation period is allowed to be deducted, then the new date for filing the Appeal would be 1.7.2013. Hence, the first phase of delay commences from 1.7.2013 to 21.2.2014 which day, the second order was passed determining the compensatory tariff on the basis of the report of the Committee.

(b) The second phase is the period between 21.2.2014 the date of 2nd order and 16.6.2014, the date of filing the Appeal.

28. In regard to the first phase of delay, the Applicant submits that the vacation period has to be deducted. This is not an acceptable explanation since the same is the false explanation.

29. The vacation period is only for the sitting of the Tribunal and not to the Registry. There is no vacation for the Registry. The Registry even during vacation period works on all the working days. During that period the Appeal would have been filed. But during that period as admitted by the Applicant it was decided not to file as against the Order dated 15.4.2013 but on the other hand it proceeded for the implementation of the Order dated 15.4.2013 by participating in the proceedings of the Committee to arrive at an amicable solution.

30. As indicated above, some procurers have challenged the order and filed the Appeal and the same is pending before this Tribunal. Therefore, the statement of the Applicant that it waited for the amicable solution during the final order passed on 21.2.2014 does not deserve acceptance.

31. The second phase of delay is with regard to the 2nd period. Even according to the Applicant, the 2nd period had

commenced on 21.2.2014 on which date the second order was passed. Even against this order dated 21.2.2014 several procurers have filed an Appeal immediately thereafter and filed an Application for stay before this Tribunal. On the date of the admission of these Appeals, the Applicant through its Counsel was present on behalf of the Respondent and notice was taken on the same date by the learned Counsel appearing for the Applicant. If that was so, the Applicant ought to have explained as to why there was a further delay of 4 months between the period i.e. date of the Order dated 21.2.2014 and the date of filing of the Appeal namely on 16.6.2014.

32. Virtually there is no explanation for this period.

33. According to the Applicant, even after receipt of the Order dated 21.2.2014, the Applicant was hopeful of finding out a resolution as agreed by the parties on the basis of the Report accepted by the Central Commission on 21.2.2014.

34. This statement also would show that there is lack of bona fide because after 21.2.2014, the procurers who were aggrieved by the order immediately filed various Appeals before this Tribunal and same was admitted in the presence of the Applicant. Therefore, no credibility could be attached to the statement of the Applicant to the effect that the

Applicant was still hopeful of the final resolution even after the order was passed on 21.2.2014.

35. Thus, the explanations given for both the phases of period are not only not satisfactory but also reflect the Applicant's conduct of negligence and lack of diligence.

36. As mentioned earlier, the Applicant's case is that it did not choose to file the Appeal as against the Order dated 15.4.2013 initially in view of the possibility of an amicable solution.

37. As mentioned earlier, the other parties participating before the Committee cannot be construed to be agreeable for the solution. Even assuming that the Applicant felt that there was a possibility of an amicable solution and deliberations over the possible settlements before the Committee, this cannot be the ground to show that there is a sufficient cause to condone the delay.

38. This principle has been laid down by this Tribunal in Appeal No.77 of 2009 which is as follows:

> *"23. It is settled law that mere correspondence with the parties would not extend the cause of action or suspend the period of limitation. The discussions and negotiations held between the parties for a possible settlement even by way of conciliation as a prelude to arbitration will not stop the cause of action accruing to the party by the reason of denial of a claim, nor such cause of action once accrued gets extended or*

suspended by the period during which the efforts for an amicable settlement were in progress. The State Commission held so in the light of the facts admitted by the parties and also in view of the well settled legal principle on computation of compensation."

39. So, from the above observations made by this Tribunal it is evident that the ratio has been decided that mere initiations for settlement talks would not stop the cause of action accrued to the parties by the reasons of the progress in the amicable settlements process. Once the limitation period commences to run, it is not stopped and the cause of action once accrued, is neither extended nor suspended due to such initiations.

40. In view of the above ratio, the explanation offered now by the Applicant that there was a possibility of amicable settlement cannot be countenanced as valid in law.

41. The fact that the Applicant became an aggrieved party over the Impugned Order dated 15.4.2013 cannot be disputed in view of the fact that the Applicant's claims regarding 'Force Majeure' and 'Change in Law' were rejected by the Central Commission.

42. Similarly, the fact that the Impugned Order dated 15.4.2013 was challenged by the other party namely Haryana Utilities in the Appeal No.151 of 2013 against the said order in which they sought the permission from this Tribunal to

participate in the committee proceedings without prejudice to their rights and contentions urged in the Appeal is also cannot be disputed.

43. In view of the above, the Applicant even though it is an aggrieved party over the portion of the Impugned Order dated 15.4.2013, and the other party has already filed the Appeal as against the other portion of the said Order, the Applicant did not exercise its right to file the Appeal at that stage itself as against the Order dated 15.4.2013 like that of the procurers who exercised their rights by filing the Appeal as against the other portion of the Order.

44. This clearly proves that the Appellant duly accepted the Impugned Order and proceeded with its implementation without taking any step to challenge the said order at the relevant time. As indicated above, there is no acceptable explanation for the failure to file the Appeal at that stage and in that Appeal; the Applicant could have sought for the permission to participate in the Committee proceedings without pre-judice to their rights and there is no explanation for the failure of the same.

45. This would clearly indicate that the Applicant has consciously and deliberately decided not to challenge the Order dated 15.4.2013 as admitted by the Applicant itself that it was hopeful of substantial relief from procurers on the

aspect of compensatory tariff. In view of the such expectation, the Applicant decided not to file the Appeal at that stage although, the other procurers had filed the Appeal before the Tribunal.

46. As mentioned above, if the Haryana Utilities had accepted the order dated 15.4.2013 of the Central Commission without any reservation, they would not have filed the Appeal as against the Impugned Order immediately thereafter in Appeal No.151 of 2013.

47. In the light of the above discussion we are of the view that the Applicant was negligent throughout by their inaction and the lack of diligence and decided not to file the Appeal at the appropriate state. But, after a long time, now the Applicant decided to file the present Appeal along with the Application to condone the delay of 374 days without any valid explanation.

48. As laid down by the Hon'ble Supreme Court when a case has been presented in the Court beyond the period of Limitation, the Applicant has to explain to the Court as to what was sufficient cause which prevented him to approach the Court within the period of Limitation. The term "sufficient cause" means that the parties should not have acted in a negligent manner or there was no malafide on its part.

49. In other words, the Applicant must satisfy that it was prevented by any sufficient cause from filing this Appeal in time. Unless such a satisfactory explanation showing sufficient cause is offered, the Court cannot allow the Application to condone the delay.

50. In this case, as mentioned earlier, the Applicant is found to be negligent or for want of bona fide on its part in the facts and circumstances of this case since the Applicant has not acted diligently and on the other hand, it remained inactive throughout having taken the decision earlier not to file the Appeal.

51. Under these circumstances, there is no justification to condone the delay.

52. That apart, once a valuable right has accrued in favour of the other party as a result of failure of the Applicant by explaining the delay by showing sufficient cause, it will be unreasonable to take away the right of the other party on the mere asking of the Applicant particularly when the delay is directly a result of the negligence or inaction of the Applicant.

53. In other words, the right accrued to the other party should not be lightly disturbed by this Tribunal. Justice must be

done to both the parties equally. Then alone, the ends of justice will be achieved.

54. In view of the above, we hold that the explanation offered by the Applicant for the inordinate delay not only suffers from lack of bona fide but also suffers from the lack of diligence.

55. Hence, this Application to condone the delay is dismissed.

56. Consequently, the Appeal is also rejected.

57. No order as to costs.

58. Pronounced in the Open Court on this **15th Day of September, 2014.**

(Rakesh Nath) ***(Justice M. Karpaga Vinayagam)***
Technical Member **Chairperson**

Dated:15th Sept, 2014

√REPORTABLE/~~NON REPORTABLE~~