

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

**Dated:31<sup>st</sup> October, 2014.**

**Present:**

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

**IA No. 380 of 2104**

**in**

**DFR No. 2355 of 2014**

**In the Matter of:**

**Adani Power Ltd.**  
**9th Floor, Shikhar, Mithakali Six Road**  
**Navrangpura, Ahmedabad - 380009**

**..... Appellant**

**Versus**

- 1. Central Electricity Regulatory Commission & Ors**  
**3rd & 4th Floor, Chanderlok Buliding**  
**36, Janpath, New Delhi - 110001**
- 2. Uttar Haryana Bijli Vitran Nigam Ltd.**  
**Vidyut Sadan, Plot No. C-16, Sector 6**  
**Panchula, Haryana, - 134 112**
- 3. Dakshin Haryana Bijli Vitran Nigam Ltd.**  
**Vidyut Nagar, Vidyut Sadan**  
**Hissar, Haryana - 125 005**
- 4. Gujarat Urja Vikas Nigam Limited**  
**Sardar Patel Bhawan, Race Course Circle**  
**Vadodara - 390 007 (Gujarat)**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. C S Vaidyanadhan  
Mr. Amit Kapur  
Ms. Poonam Verma  
Mr. Akshai Jain  
Mr. Shantanu Singh  
Mr. Gaurav Dudeja  
Mr. Vikram  
Mr. Pranav Vyas  
Mr. Malav Deliwela

Counsel for the Respondent(s): Mr. Dhananjay Baijal  
Mr. Nikhil Nayyar for R-1  
Mr. M G Ramachandran  
Ms. Anushree Bardhan  
Ms. Poorva Saigal for R-2, 3, 7 & 8  
Mr. S K Nair for GUVNL

## **ORDER**

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

1. This is an application to condone the delay of 481 days in filing the Appeal as against the order dated 02.04.2013 passed by the Central Commission.
2. Aggrieved by the impugned Order dated 02.04.2013, challenging certain specific findings of the said Order, the Appellant has filed his Appeal.
3. Since, there was a delay in filing the Appeal; the Applicant has filed this Application to condone the delay of 481 days along with the Appeal.

4. The Respondents have raised serious objections for the condonation of delay, mainly on the ground that the explanation offered by the Applicant for this inordinate delay, was not satisfactory and not bona fide.

5. In the light of the objections raised by the Respondents, we shall now refer to the explanation offered by the Applicant in the Application for Condonation of Delay.

6. The crux of the explanation as narrated in the Application to Condone the Delay is as follows:-

"(a) The Adani Power executed PPA with Haryana Utilities for the supply of contracted capacity of 1424 MW. In the meantime, Adani Power entered into Coal Supply Agreement for procurement of Indonesian Coal. The Gujarat Urja issued a public notification inviting proposals from generators to supply power to it. Ultimately, Adani Power was selected as successful bidder. On 23.09.2010, Republic of Indonesia promulgated the Indonesian Regulation, coupled with devaluation of INR, the landed price of local increased multi-fold.

(b) In view of the above, Adani Power informed Haryana Utilities and Gujarat Urja about the aforesaid

events and sought adjustment of tariff under the PPAs. However, there was no response. Therefore, the Adani Power filed a petition, before the Central Commission praying for a mechanism to restore Adani Power to the same economic position prior to occurrence of subsequent events.

(c) After considering the submissions made by the parties, the Central Commission passed the impugned Order dated 02.04.2013, rejecting the submission of Adani Power that subsequent events constitute 'Force Majure' or 'Change in Law'. However, it is decided to constitute a Committee to determine and recommend Compensatory Tariff to be given to Adani Power. Accordingly, the Committees were constituted, several meetings were held. All the procurers as well as generators actively participated in the Committee meetings. The Committee, after finishing the inquiry, sent a report to the Central Commission. On the basis of the Report, the Central Commission passed the Order dated 21.02.2014, fixing the Composite Tariff.

(d) Earlier, the Adani Power, the Applicant did not choose to file the Appeal as against the present impugned Order dated 02.04.2013. Since, Adani Power

was led to believe that the procurers wanted to find out a solution for Composite Tariff to mitigate the economic loss caused without this Appeal. However, subsequent Order dated 21.02.2014, the Utilities filed the Appeal on 17.04.2014 against the Order dated 02.04.2013. On realizing that the procurers wanted to pursue the matter and file the Appeal, Applicant also filed Cross Objection in the said Appeal and the same was dismissed by the Tribunal on 01.08.2014. Thereupon, Adani Power has decided to file a separate Appeal and accordingly filed this Appeal. That was how the delay was caused. Since it is bonafide, the delay may be condoned."

7. This explanation is sought to be opposed by the Respondents, contending that there is no sufficient cause shown by the Applicant with reference to the long delay apart from the fact, that the explanation for the delay are frivolous as well as not bonafide.

8. Both the parties have cited number of authorities to substantiate their respective pleas.

9. In view of the rival contentions urged by both the parties, we shall now consider the question **“as to whether sufficient cause has been shown by the Applicant for the**

**Condonation of 481 days delay in filing the Appeal against the Order dated 02.04.2013”.**

10. Before dealing with this question, as to whether to condone the delay in the light of the facts of this case, it would be appropriate to quote the authorities cited by both parties giving the guidelines to be followed while considering the condonation of delay.

11. The learned Counsel for the Appellant cited the decision rendered by Hon’ble Supreme Court in 2013 Vol. 12 SCC 649, Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, hearing the principles applicable to an application of Condonation of Delay.

12. In support to his prayer to condone the delay of 481 days, the relevant guidelines given by the Hon’ble Supreme Court in their decision after quoting various authorities are as follows:-

*i) There should be a liberal, pragmatic, justice-oriented non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

*ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regarding being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

*iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

*iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

*v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

*vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

*vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed to a totally unfettered free play.*

*viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

*ix) The conduct, behaviour and attitude of party relating to its inaction or negligence are relevant facts to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

*x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be*

*vigilant not to expose the other side unnecessarily to face such a litigation.*

*xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

*xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

*xiii) The State or a public body or an entity representation a collective cause should be given some acceptable latitude..*

*To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

*a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on mertis is seminal to justice dispensation system.*

*b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

*c) Though no precise formula can be laid down regarding being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters”.*

13. The learned Counsel for the Respondents has cited the following authorities to contend that the explanation without showing “Sufficient Cause” to condone the delay cannot be accepted:

i) **AIR 2014SC 1612 - Brijesh Kumar and Ors. -v- State of Haryana and Ors.**, in which the case of Esha Bhattacharjee cited by the learned Senior Counsel for the Appellant has been referred to. The relevant observations in this decision are as follows:-

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

*(b) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

*(c) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

*(d) The conduct, behaviour and attitude of a party relating to its in action or negligence are relevant factors to be taken into consideration. It is*

so as the fundamental principle is that the courts are required to weight the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(e) The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1063. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.”

**ii) AIR 2014SC 746 - Basawaraj and Ors -v- The Spl. Land Acquisition Officer**

“(a) In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”.

(b) The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within

*limitation. In case a party is found to be found negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature.”*

**iii) 2008 (17) SCC 448 - Pundlik Jalam Patil -v- Executive Engineer, Jagaon Mediam Project and Another**

*“The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court*

*helps those who are vigilant and do not slumber over their rights.”*

**iv) AIR 1981SC 733 - Ajit Singh Thakur Singh and Anr.  
-v- State of Gujarat**

*“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.”*

14. On the strength of these decisions, on which the principles have been laid down for consideration of the condonation of delay, the learned Counsel for Respondents vehemently opposed this application to condone this delay contending that the Applicant filed the Appeal after inordinate delay without showing sufficient cause and without acting bona fide.

15. When the similar question has been raised before this Tribunal in the Application to condone the delay by Coastal Gujarat Power Limited challenging the similar Order was

dismissed, this Tribunal has considered the said Application for delay of 374 days and dismissed the same on 15.09.2014 in IA No. 276 of 2014 mainly on the ground the conduct of the party in approaching the Tribunal with delay was not bona fide.

16. The learned Counsel for the Respondent relies upon this Order passed by this Tribunal in support of his objection that is referred to in the relevant extracts of this Order dated 15.09.2014:-

*“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?”*

*23. The above statement would clearly show that the Appellant initially decided consciously not to challenge the Order dated 15.04.2013. 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 15.04.2013, 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 15.04.2013 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 15.04.2013 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.*

*34. This statement also would show that there is lack of bona fide because after 21.02.2014, 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 21.02.2014.*

*42. Similarly, the fact that the Impugned Order dated 15.04.2013 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 15.04.2013 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 15.04.2013 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 15.04.2013 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 expectation, the Applicant decided not to file the Appeal at that stage although, the other procurers had filed the Appeal before the Tribunal.*

*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.*

*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.”*

17. In the light of the guidelines and principles referred to in the judgements of Hon'ble Supreme Court as well as the Order passed by this Tribunal in the Application filed by the Coastal Gujarat Power Limited, we have to consider the question as to whether the explanation for delay of 481 days in filing the Appeal has shown sufficient cause reflecting the bona fide of the party to condone the delay.

18. While dealing with this issue, it would be necessary to refer to the relevant events and dates which caused the delay for filing the Appeal.

19. The Impugned Order was passed by the Central Commission in Petition No. 155 of 2012 rejecting the plea of Adani Power with reference to the Force Majeure and Change in Law on 02.04.2013. This Order dated 02.04.2013 was communicated on 08.04.2013.

20. The Applicant even though there is some finding as against it with reference to the Force Majeure and Change in Law, did not choose to file the Appeal, then and there and on the other hand, the Applicant was interested in proceed to implement the said order dated 02.04.2013 to secure the benefit of compensatory tariff under the order dated 02.04.2013 whereas, the Respondents No. 2 and 3 against the Order dated 02.04.2013 had filed the Appeal No. 100 of 2013, challenging the said Order on the aspect of exercise of regulatory powers to

determine the compensatory tariff. In this Appeal, the Respondents as Appellants in 100 of 2013 mentioned specifically reserving the right to proceed in the matter, notwithstanding the participation in the Committee's proceedings.

21. In spite of the fact that the Applicant knew about the same, the Applicant did not choose to file the Appeal and decided not to file the Appeal to challenge the decision of Central Commission on the aspect of Force Majeure or Change in Law by making any such reservation in the Appeal as was done by the Respondents.

22. Thus, the Applicant consciously decided not to challenge the Order dated 02.04.2013 passed by the Central Commission. The Applicant, as a matter of fact, has specifically stated that Adani Power took the decision for not filing the Appeal earlier in order to put a quietus to litigation and as such it is a bona fide decision.

23. This explanation could be accepted only when both the parties agree for the settlement by participating the proceedings before the Committee. But that was not the case here.

24. The Respondent No. 2 and 3 immediately rushed to the Tribunal and filed the Appeal 100 of 2013 as against the

02.04.2013 Order, challenging the said Order raising various prompts.

25. In the said Appeal, as indicated above, the Respondent No. 2 and 3 have substantially stated that they would participate in the Committee's proceedings without prejudice to their rights to challenge the Impugned Order in the Appeal filed before this Tribunal.

26. In view of the same, it is wrong on the part of the Applicant to contend that it proceeded on the basis that the Respondents would agree to the compensatory tariff or the Applicant was led to believe that there would be a final solution.

27. In view of the above circumstances, the Order passed by this Tribunal in IA No. 276 of 2014 dated 15.09.2014 in the matter of Coastal Gujarat Power Limited would squarely apply to the present case as well.

28. As held by this Tribunal, in the above order, once the Order dated 02.04.2013 is challenged in regard to one portion by which Haryana Utilities in Appeal No. 100 of 2013, the Applicant also must have filed the Appeal at this stage itself challenging the other portion of the Impugned Order dated 02.04.2013 rejecting the claims of the Applicant in respect of the elements of Force Majeure or Change in Law. In that Appeal, the Applicant

would have mentioned that the parties who participated in the Committee proceedings without prejudice to its right and contentions raised in that Appeal with regard to the rejection of their claims. Admittedly, this was not done.

29. Of course in the present case, the Applicant filed a Cross-Objection in view of 100 of 2013, filed by the Respondent No. 2 and 3 with a bona fide belief that the same was maintainable but this Tribunal ultimately rejected the said Cross-Objection by the Order dated 01.08.2014 and thereby further delay was caused.

30. As correctly pointed out that the learned Counsel for Respondents, the Cross-Objection was filed by the Appellant only on 17.04.2014 in Appeal No. 100 of 2013, although the Impugned Order passed as on 02.04.2013. The time taken for disposal of Cross-Objection was only for the period from 17.04.2014 to 01.08.2014 i.e. 106 days even if this period is excluded then there will be delay of 375 days in filing the Appeal. That apart even the Cross Objection was filed after delay of 330 days.

31. Though there is some explanation with regard to the period from 17.04.2014 to 01.08.2014, there is no satisfactorily explanation between 02.04.2013 and 17.04.2014 in the first phase and between 02.08.2014 and 16.09.2014 date of the Appeal on which the Appeal has been filed, the second phase.

32. One of the contentions urged with the Applicant that the present Appeal is against the Impugned Order dated 02.04.2013 and since the said Order has already been challenged in Appeal No. 100 of 2013 filed by the Haryana Utilities, Respondent, there would be no prejudice caused to the Respondents by condonation of delay in filing this Appeal especially when the proceedings before this Tribunal in Appeal No. 100 of 2013 were periodically adjourned to various dates awaiting the final result for the compensatory tariff.

33. We are not more concerned with the prejudice being caused to the Respondents, since the condonation of delay is a matter of discretion of the Court wherein the only criteria is the sufficiency of the cause. In the matter of condonation of delay, the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken note of. Though the Courts should not adopt an injustice-oriented approach in rejecting the Application of condonation of delay, the Courts while allowing such application has to draw the distinction between delay and inordinate delay for want of bona fides of an inaction or negligence which would deprive the opposite party of the protection under the Limitation Act.

34. When the delay is not satisfactorily and convincingly explained, the Court cannot condone the delay on equitable or sympathetic grounds. 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.

35. In other words, the delay should not be attributable to negligence, inaction or want of bona fide on the part of the defaulting party.

36. In other words, if there is material to indicate the party's negligence in not taking necessary steps, the period cannot be extended. If the explanation offered on fanciful or concocted, the Court should be vigilant not to expose the other side unnecessarily to face such antiquation.

37. In the present case, the main reason given by the Applicant for not filing the Appeal in time that the Applicant proceeded to implement the Order dated 02.04.2013 on the basis that the answering Respondents would also agree to the compensatory tariff as the Applicant was led to believe that there would be a final solution.

38. This contention is basically wrong because the other parties have already filed the Appeal as against the 02.04.2013 Order and during the pendency of the said Appal, they participated in the Committee's proceedings without prejudice

their rights to challenge the Order dated 02.04.2013 which is the subject matter of the Appeal No. 100 of 2013.

39. When such was the case, the Applicant cannot be said to have bona fide impression that there will be a final solution since both parties would agree for the compensatory tariff.

40. It is the specific stand taken by the Applicant now that the answering Respondents had earlier agreed to an amicable solution and thereafter the answering Respondents are seeking to resile the same and thus, therefore the Applicant has now decided to file the Appeal. This has no basis. The answering Respondents had never agreed to an amicable solution.

41. On the other hand, immediately after the impugned Order, the Haryana Utilities rushed to the Tribunal and filed the Appeal in 100 of 2013, specifically mentioned that their participation in the Committee's proceedings without prejudice their rights to pursue the Appeal. It that was the admitted case, there is no reason as to why the Applicant kept mum without resorting the similar remedy without filing an Appeal immediately thereafter as against the Impugned Order dated 02.04.2013.

42. The fact that the Applicant became an aggrieved party over the Impugned Order dated 02.04.2013 cannot be disputed in view of the fact, that the Applicant's claim regarding Force

Majeure or Change in Law was rejected by the Central Commission. Even though the Applicant became an aggrieved party over the portion of the Impugned Order dated 02.04.2013 and the other party has already filed the Appeal as against the other portion of the said Order, the Applicant did not choose to exercise its right to file the Appeal at that stage itself. This would clearly prove that the Applicant duly accepted the Impugned Order and proceeded with this implementation without taking any steps to challenge the said Order at the relevant time.

43. As laid down by the Hon'ble Supreme Court, when the case is being presented in the Court beyond the period of limitation, the Applicant has to explain to the Court as what was the sufficient cause which prevented him to approach the Court within a period of limitation.

44. The term "sufficient cause" means that the party should not have acted in a negligent manner or there should be no mala fide on its part. In other words, the Applicant must have satisfied that it was prevented by any "sufficient cause" from filing the Appeal in time. In this case, the Applicant did not show any event which prevented it for filing the Appeal and on the other hand, it showed the cause that the it accepted for amicable solution among the parties as both the parties agreed for the same. This ground has no basis, as it was claimed by the

Respondents that they have never agreed for the final solution and that is why they approached the Tribunal by filing an Appeal No. 100 of 2013 against the Order dated 02.04.2013.

45. In the light of the above circumstances, we hold that the explanation offered by the Applicant for inordinate delay of 481 days not only suffers from lack of bona fide but also suffers from the lack of diligence and lack of sufficient cause.

46. Hence this Application to condone the delay is dismissed.

47. Consequently, the Appeal is also rejected.

**(Rakesh Nath)**  
**Technical Member**

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

**Dated :31<sup>st</sup> October, 2014**

**✓ REPORTABLE / ~~NON-REPORTABLE~~**