

COURT - I

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

**Review Petition No. 5 of 2010 in
I.A. No. 100 of 2010**

&

**Review Petition No. 6 of 2010 in
I.A. No. 101 of 2010**

&

**Review Petition No. 7 of 2010 in
I.A. No. 118 of 2010 in
Appeal No. 135 of 2007**

Dated: 26th April, 2010

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

**M/s Gimatex Industries Private Limited (in R.P. 5 & 6 / 07)
M/s Suryalaxmi Cotton Mills Limited (in R.P. 7 / 07)**

... Review Petitioners

**Eurotex Industries & Exports Ltd.
Versus**

... Appellant/ (s)

Maharashtra State Electricity Distribution Co. & Anr.

... Respondent (s)

Counsel for the Review Petitioner (s) : Mr. M.M. Agnihotri

ORDER

**These Review Petitions No. 5/10, 6/10 & 7/10 have been
filed against the Order dated 12.05.2008 passed by this Tribunal in
Appeal No. 135 of 2007.**

**The Review Petitions No. 5/10 & 6/10 have been filed by
M/s Gimatex Industries Private Limited along with an Application to**

Condone the Delay of 563 days in filing the Review against the Order dated 12.05.2008 passed in Appeal No. 135 of 2007. Similarly, the other Company, namely, Suryalakshmi Cotton Mills Limited, filed another Review Petition No. 7/10 against the said Order along with an Application to Condone the Delay of 717 days in filing the Review.

The Registry has raised a question with reference to the maintainability stating that the Review Petitioners are not parties to the proceedings before this Tribunal in Appeal No. 135 of 2007 and therefore, the Review Petitions are not maintainable.

The learned counsel for the Review Petitioners citing several authorities to show that any aggrieved person though not a party to the main proceedings can file a Review and seek for setting aside of the main Order, submits that the Review Petitions are maintainable. It is also contended by the learned counsel for the Review Petitioners that the delay is caused because of the fact that the Order passed by this Tribunal in Appeal No. 135 of 2007 on 12.05.2008 did not come to the knowledge of the Review Petitioners and only after getting a Bill they came to know about the Order of

the Appellate Forum and when they enquired with Distribution Company, they came to know that the amount mentioned in the Bill was in pursuance of the Order passed by this Tribunal in Appeal No. 135 of 2007 and that was how the delay was occurred.

Heard the learned counsel for the Review Petitioners.

These Review Petitions, in our view, are not maintainable, and as such, they have to be dismissed on the following grounds:

- 1. Admittedly, the Review Petitioners were not the parties to the Appeal No. 135 of 2007 disposed of by this Tribunal on 12.05.2008. It is contended on the basis of the Judgment of the Supreme Court that such Order in Appeal No. 135 of 2007 cannot be passed by this Tribunal without hearing the parties which are interested in the proceedings, especially when the petitioner was a party to the proceedings before the Commission through their Association. Even assuming that the petitioners can be considered to be aggrieved parties, the ground that the principles of natural justice have not been followed by this Tribunal cannot be a ground for Review.**

- 2. The Review can be entertained only when (1) there is apparent error on the face of the record; (2) some new evidence has been brought in to upset the main order; and (3) if there is sufficient reason. The main ground raised in these Review Petitions that the Order was passed by the Tribunal in Appeal No. 135 of 2007 dated 12.05.2008 modifying the Clause 7. (4) (g) thereby affecting the interest of the petitioners without hearing the necessary parties named in the petition. In our view, the failure to give opportunity by the Tribunal to the affected parties, who are the parties before the Commission, cannot be a ground for the Review.**
- 3. Admittedly, nothing has been brought to our notice that there is an apparent error on the face of the record. Similarly, it is not the case of the Petitioners that there is some new evidence now available to show that the main Order is patently wrong. In the absence of the sufficient material or ground for Review, these Review Petitions cannot be entertained.**

- 4. It is also noticed that there is a delay of 563 days in filing the Review Petition Nos. 5/10 & 6/10 and there is a delay of 717 days in filing Review Petition No. 7/10. Though the Supreme Court held that each days delay need not be explained, we do not find any reasonable explanation in the affidavit filed by the parties to condone the delay, which is inordinate. Whatever it is, we find that there is no ground for Review as indicated earlier. Unless, there is an apparent error on the face of the record, the Review cannot be entertained merely on the ground that the Order had been passed by this Tribunal without hearing the necessary party, as the remedy for the same is elsewhere and not before this Tribunal**
- 5. Further, it is noticed that one other party interested, has filed a Review in I.A. No. 5 of 2008 as against the main Order in Appeal No. 135 of 2007 before this Tribunal and the same was dismissed on 30.04.2009.**

So we are not inclined to take a different view from that of the view taken in the said Order.

- 6. Consequently, the Review Petitions as well s the Petitions to condone the delay in the filing the Review Petitions are dismissed.**

**(Rakesh Nath)
Technical Member**

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

Dated: 26.04.2010

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