

**COURT-II**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**(Appellate Jurisdiction)**

**IA NO. 73 OF 2019 IN DFR NO. 3722 OF 2018 &**  
**IA NO. 342 OF 2019**

**Dated: 8<sup>th</sup> April, 2019**

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member**  
**Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

**In the matter of:**

**Gujarat Urja Vikas Nigam Limited**

**.... Appellant(s)**

**Versus**

**CLP Power India Private Limited & Anr.**

**.... Respondent(s)**

Counsel for the Appellant(s) : Ms. Ranjitha Ramachandran  
Mr. Pulkit Agrawal  
Mr. Shubham Arya

Counsel for the Respondent(s) : Mr. Vishrov Mukherjee  
Mr. Janmali M. for R-1  
  
Mr. Mridul Chakravarty  
Mr. Pallav Mongia for R-2

**ORDER**

1. The instant Application filed by the Appellant for condonation of delay of 1082 days in filing the Appeal contending that the Review Petition being No. 1540 of 2015 was dismissed vide order dated 24.08.2018. This order was communicated to the Appellant vide communication dated 24.08.2018 which was received on 30.08.2018. Since there were errors apparent on the face of the record and otherwise sufficient grounds for review, the Appellant on 21.10.2015 had filed a Review Petition being Petition No. 1540 of 2015. The Review petition was heard by the State Commission on various dates namely 13.05.2016 and 30.07.2016. The Review Petition No. 1540 of 2015 has been dismissed vide Order dated 10.08.2018. The

Order dated 10.08.2018 was communicated to the Appellant vide Letter dated 24<sup>th</sup> August 2018 received on 30<sup>th</sup> August 2018. On receipt of the Order dated 10.08.2018 dismissing the Review Petition, the Appellant sought legal advice from the counsel and after discussions, the Appellant decided to file an appeal against the Order dated 31.07.2015. The draft appeal was prepared and sent to the Appellant's office. The Appeal was finalized and thereafter filed before this Tribunal. The appeal was filed within 45 days of the communication of the Review Order. In the circumstances mentioned above, the delay in filing the appeal is bonafide. It is, therefore, respectfully prayed that this Tribunal may be pleased to kindly condone the delay of 1082 in filing the Appeal. The delay may kindly be condoned and the matter may be heard on merit in the interest of justice and equity.

2. To substantiate her submissions the learned counsel appearing for the Appellant Ms. Ranjitha Ramachandran inter alia contended and placed reliance on order dated 31<sup>st</sup> January, 2019 in IA No. 1553 of 2018 in DFR No. 3178 of 2018 passed by this Tribunal in the matter of Damodar Valley Corporation Vs. WBERC & Ors. She was quick to point out and taken us through the page no. 7 of the said order submitting that there is 1143 days delay in filing said Appeal. This Tribunal observed that on perusal of the first affidavit and the additional affidavit filed in support of condonation of delay application, it indicates that there was no intentional withholding of any facts by the Appellant. On the other hand, pendency of the Review Petition for the last three years is not denied. The reason for the delay in

filing the present appeal is explained by the Appellant stating that they were pursuing the review petition with all endeavour and were hoping an early disposal of the said petition. They further believed that in Review Petition they would get the controversy resolved. Therefore, till the Review Petition came to be rejected, there was no occasion for the Appellant to think, analyse the situation and file the appeal. It depends on the advice (legal) they receive and probably they believed that Review Petition would be the proper solution instead of appeal. In that view of the matter, we are of the opinion that the Appellant has placed sufficient material on record and the explanation given as to why the delay of 1143 days is caused. We accept the said explanation and condone the delay of 1143 days in filing the appeal. She submitted that in the light of the order of this Tribunal as referred above the delay has been explained satisfactorily and sufficient cause has been shown in the application. The same may kindly be accepted and delay in filing the Appeal may kindly be condoned and the instant application may be allowed in the interest of justice and equity on this ground also.

3. **Per contra**, the learned counsel Mr. Vishrov Mukerjee appearing for the first respondent inter alia contended and vehemently submitted that, the application may be dismissed on the ground of delay and laches and the reasons given by the Appellant are devoid of merits and not justifiable. The State Commission after due consideration, dismissed the Review Petition on the ground that the issues raised in the petition have been dealt with and reasoning has been recorded. Therefore, this is not a case for condoning the delay. To substantiate his submissions he placed reliance on the judgment of Hon'ble Supreme Court passed in Civil Appeal No.

5958 of 2015 dated 22<sup>nd</sup> September, 2016 where the Hon'ble Supreme Court held that the two main ingredients required for attracting the principles under Section 14 of the Limitation Act, 1964 are that the party should be prosecuting another civil proceedings with due diligence and that the prosecution should be in good faith. It is not enough that one part is satisfied. Both due diligence and good faith must be established. This Tribunal had condoned the delay without noticing the bar under Section 125 of the Electricity Act, 2003 for condoning delay beyond 60 days after expiry of the limitation period. Therefore, the order dated 03.08.2015 condoning the delay of 161 days in filing the appeal is recalled. The Appellant has not been due diligent in filing the Appeal. Therefore, the application filed by the Appellant may kindly be rejected. In the light of above, delay explained in the application may not be considered and appropriate order may be passed to meet the ends of justice.

4. Submissions of the learned counsel appearing for the Appellant and the learned counsel appearing for the first Respondent, as stated above, are placed on record.
5. The delay in filing has been explained by the Appellant reads as follows:-

*"It is submitted that the aggrieved by the various aspects in the Impugned Order dated 31.07.2015, the Appellant considered filing a review Petition or an Appeal. Since there were errors apparent on the face of the record and otherwise sufficient grounds for review, the Appellant on 21.10.2015 had filed a Review Petition being Petition No.*

*1540 of 2015. The Review petition was heard by the State Commission on various dates namely 13.05.2016 and 30.07.2016*

*The Review Petition No. 1540 of 2015 has been dismissed vide Order dated 10.08.2018.*

*The Order dated 10.08.2018 was communicated to the Appellant vide Letter dated 24<sup>th</sup> August 2018 received on 30<sup>th</sup> August 2018.*

*On receipt of the Order dated 10.08.2018 dismissing the Review Petition, the Appellant sought legal advice from the counsel and after discussions, the Appellant decided to file an appeal against the Order dated 31.07.2015.*

*The draft appeal was prepared and sent to the Appellant's office. The Appeal was finalized and thereafter filed before this Tribunal.*

*It is stated that the appeal was filed within 45 days of the communication of the Review Order.*

*In the circumstances mentioned above, the delay in filing the appeal is bonafide. It is, therefore, respectfully prayed that this Tribunal may be pleased to:*

- (a) Condone the delay of 1082 days in the filing of the appeal; and*
- (b) Pass any such further order or orders this Tribunal may deem just and proper in the circumstances of the case."*

In the light of the submissions of the learned counsel appearing for the Appellants and the learned counsel appearing for the Respondent No.1 and the reasoning assigned in paragraph 2 to 8 in the application for explaining the delay in filing the Appeal, the Appellant has given valid and

cogent reasons for explaining the delay in filing the Appeal. Further it is significant to note that in the light of the order dated 31<sup>st</sup> January, 2019 in IA No. 1553 of 2018 in DFR No. 3178 of 2018 passed by this Tribunal in the matter of Damodar Valley Corporation Vs. WBERC & Ors. In the light of ration of the order of this Tribunal as stated above and having regard to circumstances of the case as stated supra, we held that the Appellant has explained the delay in filing the Appeal. The delay has been explained satisfactorily in filing the Appeal and sufficient cause has been shown. Hence, we accept the same. Delay in filing the appeal is condoned.

IA is allowed. The IA Being IA No. 73 of 2019 stands disposed of.

**DFR NO. 3722 OF 2018 &**  
**IA NO. 342 OF 2019**

Registry is directed to number the Appeal and post the matter for admission on **15.04.2019.**

**( Ravindra Kumar Verma)**  
**Technical Member**  
*mk/bn*

**(Justice N. K. Patil)**  
**Judicial Member**