

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated: 22nd August, 2014

Present:

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

IA No.245 OF 2014

IN

DFR No.1347 OF 2014

In the Matter of:

1. **Jodhpur Vidyut Vitran Nigam Ltd**
New Power House,
Basni, Jodhpur
Rajasthan, PIN-342 001

2. **Jaipur Vidyut Vitran Nigam Ltd,**
Vidyut Bhawan, Jyoti Nagar,
Jaipur-302 005
Rajasthan

3. **Ajmer Vidyut Vitran Nigam Ltd,**
Old Power House, Hathi Bhata,
Ajmer-305 001,
Rajasthan

..... Appellant(s)/Applicant(s)

Versus

1. **M/s. Nav Bharat Buildcon Pvt Ltd.,**
Luhadia Sadan, Jaipur Road,
Madanganj-
Kishangarh-405 801
Rajasthan

**2. Rajasthan Electricity Regulatory Commission
Vidhyut Viniyamak Bhawan, Sahakar Marg,
Near State Motor Garage,
Jaipur-302 005
Rajasthan**

...Respondent(s)

Counsel for the Appellant(s) : Dr. Manish Singhvi
Mr. D K Denesh
Mr. Anshu

Counsel for the Respondent(s): Mr. Hasan Murtaza
Mr. Aditya Panda for R-1

ORDER

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

1. This is an Application to condone the delay of 139 days in filing the Appeal as against the Impugned order dated 12.11.2013 passed by the Rajasthan Electricity Regulatory Commission (Rajasthan State Commission).
2. The explanation given in the Application to condone the delay by the Applicant(s) as quoted in Para-3 is given below:

“3. That there was some communication gap with regard to appointment of advocate and the concerned officer-in-charge contacted the advocate at Delhi especially when there was some internal shifting of the Legal Department. The delay is purely bonafide.”

3. In the above paragraph, the Applicant(s)/Appellant(s) merely stated that the delay was caused as there was a communication gap in engagement of an Advocate and there was some internal shifting of the Legal Department.
4. On perusal of the above paragraph would indicate that no details have been given with regard to the events which resulted in the delay in order to show that there is sufficient cause for long delay for the period between 12.11.2013, the date of the Order and 15.5.2014, the date of filing of the Appeal.
5. This Application is stoutly opposed by the Respondent by filing a reply Affidavit. The gist of the reply is as follows:

“The Impugned Order was passed by the Rajasthan Commission on 12.11.2013 by which the Applicant was directed to make the payments to the Respondent which was wrongly deducted. In pursuance to the directions of the State Commission, the Respondent on 20.11.2013 sent a letter to the Applicants seeking for the refund of the amount as directed by the State Commission. In response to the letter, the Applicants sent a reply only on 21.1.2014 stating that the Applicants already approached the Appellate Tribunal and filed the Appeal as against the

Order dated 12.11.2013. This statement contained in the letter dated 21.1.2014 is completely false, since the present Appeal was filed only on 15.5.2014. In the meantime, the Respondent sent another letter dated 21.2.2014 seeking for the payments. Since there was no response, the Respondent on 7.5.2014 served final notice for payment intimating that if the amount was not paid within seven days, the Respondent would take suitable action against the Applicants u/s 142 of the Electricity Act, 2003. Only thereafter, the Applicants filed this Appeal on 15.5.2014. Therefore, the explanation given in the Application to condone the delay is not only not satisfactory but also false one. Therefore, the Application to condone the delay be dismissed.”

6. We have heard the learned Counsel for both the parties.
7. The learned Counsel for the Respondent produced the copies of correspondences between the parties in order to substantiate their objection made in their reply.
8. As pointed out by the learned Counsel for the Respondent by the letter dated 21.1.2014, the Applicants intimated to the Respondent that they have already approached the Appellate Tribunal for Electricity and filed the Appeal and,

therefore, they would not be able to process the invoices till the decision taken by the Appellate Tribunal for Electricity.

9. This is factually incorrect because on the date of the letter on 21.1.2014, the Appeal had not been filed before this Tribunal. Only after the receipt of the last letter dated 7.5.2014, cautioning the Applicants that the Respondents would file a Petition u/s 142 of the Electricity Act, 2003, the Applicants filed the present Appeal on 15.5.2014 with long delay.
10. As such, these details which are not disputed, would clearly establish that the Applicants have not come with clean hands.
11. On the other hand, the Applicants have sought for condonation of the delay of 139 days on the basis of the bereft of materials by concealing the actual facts.
12. Since, we are of the view that the Application filed by the Applicant(s)/Appellant(s) is not bonafide and there is no sufficient cause to condone enormous delay of 139 days, this Application to condone the delay is liable to be dismissed.

13. Accordingly, the same is dismissed. Consequently, the Appeal is also rejected.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:22nd August, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~