

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

I.A. NOS. 359 & 350 of 2014 IN DFR No. of 1265 OF 2014

Dated : 3rd December, 2014

**Present : Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

In the matter of:

M/s. The India Cements Ltd.

.... Appellant(s)

Versus

**Andhra Pradesh Electricity Regulatory
Commission & Ors.**

.... Respondent(s)

ORDER

PER HON'BLE JUSTICE SURENDRA KUMAR

1. Interlocutory Application No. 359 of 2014 praying for condonation of delay of 574 days in filing the Appeal has been filed on behalf of the appellant stating therein that the appellant had challenged the impugned order passed by the Andhra Pradesh Electricity Regulatory Commission before the High Court of Judicature at Andhra Pradesh, Hyderabad through Writ Petition No. 38610 of 2012, inter alia, challenging the vires of Section 26 (2) & (9) of the Andhra Pradesh Electricity Reforms Act, 1998 which empowers the Andhra Pradesh Electricity Regulatory Commission to frame fuel surcharge formula by way of Regulations and the validity of Clause 45-B of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 as substituted by Regulation 1 of 2003, prescribing a formula for fuel surcharge adjustment which batch of petitions has been dismissed by the Hon'ble High Court vide order dated 24.02.2014 observing as under:-

"69. In view of the discussion as aforesaid, we are unable to accept the contention that the conditions of the Regulations challenged before us suffer from any

infirmity either constitutional or otherwise. Therefore, we uphold the vires of the aforesaid Regulations challenged.

70. We have merely decided the question of constitutional validity of the above Regulations. Under these circumstances, we have not examined the legality and validity of order/orders passed by the Commission in pursuance of the aforesaid Regulations, as an alternative remedy is provided against those orders to the appellate forum. It is now well-settled that Regulatory Commission has a dual role to play; one is to act as delegated legislature and another, as adjudicator. Since the orders were passed while exercising its powers of adjudication, the same shall be subjected to scrutiny at the first instance by the alternative mechanism by the appellate authority, for the orders passed are highly technical in nature and this technicality can be examined on the question of reasonableness and otherwise by the appellate forum.

71. Hence, we dispose of all the writ petitions granting liberty to each of the petitioners, if so advised, to prefer appeal. Since the matters are pending sub judice before this Court, if any application for condonation of delay is made, the same shall be considered taking in view the pendency of the matter before this Court, for prayer for condonation of delay. There will be no order as to costs.

72. Consequently, pending miscellaneous petitions shall stand dismissed.”

2. Since the Hon'ble High Court has granted liberty to the appellant to prefer an appeal along with application for condonation of delay, the said application merits allowance because the matter remained pending before the Hon'ble High Court and the same fact has to be given due consideration by this Appellate Tribunal while considering the application for condonation of delay. The applicant has filed the present appeal along with application for condonation of delay in view of the liberty granted to the appellant by the Hon'ble High Court and in this process there has been delay of about 574 days in filing the instant appeal.

3. We have heard Mr. K. Gopal Choudhary, learned counsel appearing for the appellant on I.A. No. 359 of 2014. Learned counsel for the appellant further submits that another application has also been moved on behalf of the appellant being I.A. No. 350 of 2014 wherein prayer is made for condonation of delay in re-filing the appeal stating the reasons causing delay in refiling which were beyond the control of the appellant. The applicant filed the Appeal against the impugned order in view of the

liberty granted by the Hon'ble High Court but the Registry notified certain defects and returned the bundle on 26.05.2014 which caused delay of 113 days in re-filing the Appeal.

4. The applications for condonation of delay have been vehemently opposed on behalf of the opposite parties/respondents saying that the said delay has not been explained satisfactorily. Even after the liberty granted by the High Court for filing the Appeal, there has been further delay in re-filing the same.

5. After hearing the learned counsel for the parties, we find that in the facts and circumstances of this case, there is sufficient ground for condoning the said delay in filing and re-filing of the instant Appeal.

6. Consequently, the IA. Nos. 359 & 350 of 2014 for condonation of delay in filing and re-filing the Appeal are hereby allowed and the aforesaid delay caused is hereby condoned subject to payment of costs of Rs. 10,000/- which is to be paid by the appellant in favour of M/s. Child Survival India, Multipurpose Community Center, Village Kherakhurd, Delhi-110 082 by way of demand draft and on production of the receipt of the said amount having been paid to the said organization, Registry is directed to number the Appeal.

Post the Appeal for hearing on 13th January, 2015 for admission.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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