

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

I.A. 385 of 2014 IN DFR No. 2269 of 2014

Dated : 4th December, 2014

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

In the matter of:

Essar Steel India Limited

.... Appellant(s)

Versus

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

.... Respondent(s)

ORDER

PER HON'BLE JUSTICE SURENDRA KUMAR

1. Interlocutory Application No. 385 of 2014 praying for condonation of delay of 680 days in filing the Appeal has been filed on behalf of the appellant stating therein that the appellant had challenged the impugned order dated 17.01.2012, passed by the Andhra Pradesh Electricity Regulatory Commission before the High Court of Judicature at Andhra Pradesh, Hyderabad through Writ Petition No. 32414 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 I.A. further states that the appellant has also filed a Special Leave Petition against the order dated 24.02.2014 of the aforesaid order of the Hon'ble High Court. 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 680 days in filing the instant appeal.

3. We have heard the learned counsel for the appellant on I.A. No. 385 of 2014 for condonation of delay of 680 days which has been caused due to pendency of the aforesaid Writ Petition before the Hon'ble High Court of Andhra Pradesh. We have also perused the order dated 24.02.2014 passed by the Hon'ble High Court. None has appeared on behalf of the respondents despite service of notice.

The Hon'ble High Court has granted liberty to the appellant with clear observation that if the appeal is filed before the Appellate Tribunal against the impugned order and the application for condonation of delay is moved, the fact of pendency of the Writ Petition before the High Court against the impugned order should be given due consideration.

4. In view of the fact that the Writ Petition filed by the appellant against the impugned order of the State Commission, inter alia, challenging the vires/validity of the aforesaid Regulations of the State Commission remained pending before the High Court for a period of about 680 days, we deem it appropriate to condone the delay of 680 days in filing the instant appeal.

5. Consequently, the IA No. 385 of 2014 for condonation of delay is hereby allowed and the aforesaid delay caused is hereby condoned. Registry is directed to number the Appeal. Issue notice to the respondents returnable for 19th December, 2014 for filing of reply/counter-affidavit, if any. Dasti service is permitted.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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