

COURT-I

Before the Appellate Tribunal for Electricity

(Appellate Jurisdiction)

IA No. 104 of 2014 in

DFR No. 518 of 2014

Dated : 28th February, 2014

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

In the matter of

Shyam Century Ferrous Ltd.

... Appellant(s)

Versus

**Meghalaya State Electricity Regulatory
Commission & Ors.**

....Respondent(s)

Counsel for the Appellant(s) : Mr. Anand K. Ganesan

Ms. Swapna Seshadri

Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan

ORDER

IA No. 104 of 2014

(Appl. For condonation of delay)

This is an Application to condone the delay of 53 days in filing the Appeal as against the Order dated 12.11.2013.

We have heard the learned counsel for the parties.

It is stated that as against the Order dated 12.11.2013, originally, the Applicant/Appellant filed the Writ Petition No.

4 of 2014 before the High Court of Meghalaya, which was ultimately dismissed as withdrawn by the Order dated 11.02.2014. Thereafter the Appeal has been filed before this Tribunal on 14.02.2014 and that was how the delay was caused. In view of the above circumstances, we deem it appropriate to condone the delay. Accordingly, I.A. No. 104 of 2014 is disposed of.

DFR No. 518 of 2014

It is noticed on a perusal of the Appeal papers that earlier a Writ Petition No. 356 of 2012 had been filed by Byrnihat Industries Association (Applicant in DFR No. 474 of 2014) challenging the Meghalaya State Electricity Regulatory Commission (Terms and Conditions of Open Access) Regulations 2012 before the High Court and the High Court admitted the said Writ Petition, on the basis of which, earlier open access charges order dated 21.08.2012 was passed in respect of the year 2012-2013. The present Order has been passed on 12.11.2013, which has been challenged in this

Appeal for the period 2013-2014, on the basis of very same Regulations.

Now it is found that the Appellant instead of filing the Appeal against the Order dated 12.11.2013 have approached the High Court to Challenge that Order by filing W.P. No.4 of 2014, which was passed on the basis of the very same Regulation, which is the subject matter of the other Writ Petition No. 356 of 2012.

Now it is pointed out by the learned counsel for the Respondent that the Applicant/Appellant himself withdrew the petition to challenge this impugned Order dated 12.11.2013 before this Tribunal. It is noticed that the main ground raised in this Appeal is with reference to the validity of the very same Regulations.

When we questioned the maintainability of the Appeal, the learned counsel for the parties argued on the said question. After hearing the learned counsel for the parties we feel that this Appeal could not be entertained because the impugned Order dated 12.11.2013 has been passed by the

State Commission implementing the said Regulations, which is challenged in the other Writ Petition pending in the High Court. Hence, it would be better to dispose of this matter giving liberty to the Applicant to approach the appropriate forum, in the light of the decision rendered by the Hon'ble Supreme Court in ***PTC INDIA LTD. VS. CERC (2010 (4) SCC 603)***.

With these observations, the Appeal is disposed of.

With regard to the open access, it is pointed out that already an interim Order has been passed by the High Court on 11.02.2014 while directing the Applicant/Appellant to approach this Tribunal, to the effect that the Applicant/Appellant was permitted to purchase the Power through open access for one week i.e., till 18.02.2014.

It is pointed out that the Respondent have extended the Open Access till today. Therefore, it would be appropriate to direct the Applicant/Appellant to purchase the Power on

payment of current cross subsidy charges as referred to in the Order dated 12.11.2013 from 19.02.2014 onwards.

Accordingly, the matter is disposed of.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

ts/kt

Note: Registry is directed to issue

Dasti of the order