

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

**IA-388 of 2014 in
DFR No. 2359 of 2014**

Dated :14th November, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the matter of

Essar Power Gujarat Ltd.	... Appellant(s)
Versus	
Gujarat Electricity Regulatory Commission & Ors.	... Respondent(s)

Counsel for the Appellant (s) :	Mr. Amit Kapur Mr. Abhishek Munot Mr. Apporva Misra
Counsel for the Respondent(s) :	Mr. M.G. Ramachandran Ms. Anushree Bardhan for R.2

ORDER

This is an Application to condone the delay of 306 days in filing the Appeal as against the main Order dated 08.08.2013. The explanation offered by the Applicant in the affidavit filed in support of the Application for condonation of delay is as follows:

- i) Before deciding to file an Appeal as against the Order dated 08.08.2013, the Applicant came to know that the other party had filed a Review Petition before the State Commission on various grounds and that some of the grounds are similar to the grounds which are applicable to

the Appellant. Hence, he did not choose to file the Appeal at that time.

- ii) In the meantime, the other party, while his Review Petition was pending, filed an Appeal before this Tribunal in Appeal No. 85 of 2014 against the same impugned Order. Ultimately, the Tribunal directed the Appellant in that Appeal No. 85 of 2014 to withdraw the Review Petition and then pursue the Appeal. Accordingly, the Review was withdrawn and Appeal No. 85 of 2014 was thereupon admitted.
- iii) During the course of proceedings in Appeal No. 85 of 2014, the Applicant filed the Cross Objection, which was stoutly opposed by the Appellant when there was objection raised by the other party to the maintainability of the Cross Objection, the learned Counsel for the Applicant filed the conversion Application for converting the said Cross Objection into Appeal. But ultimately, this Tribunal decided that both Applications were not maintainable and accordingly dismissed the same on 01.08.2014 giving permission to the Applicant to file the fresh Appeal. Accordingly, this Appeal has been filed on

16.09.2014. That was how the delay was caused, which may be condoned because the delay is bona fide.”

2. Mr. M.G. Ramachandran, the learned counsel appearing for the Respondent stoutly and vehemently opposed this Application stating that the delay of 119 days occurred while prosecuting the Cross Objection can be considered for condonation but the remaining 217 days delay cannot be condoned as there was lack of diligence.
3. As pointed out by the Respondent, there is no bar in filing the Appeal by the Applicant before this Tribunal as against the main Order merely because the Review Petition filed by the other side was pending and as such the Applicant could have filed the Appeal at that time itself.
4. We find force in the objection raised by the learned counsel for the Respondent. However, the learned counsel for the Applicant would submit that because of the lack of understanding of the legal position at that time, the Applicant did not choose to file the Appeal, which is bona fide.

5. In view of the above circumstances, we deem it appropriate to condone the delay on payment of some costs. Accordingly, the delay is condoned subject to the condition that the Applicant is directed to pay the cost of Rs.2,00,000/- (Rupees two lakhs only) to a charitable organization, namely, “**SAI DEEP DR. RUHI FOUNDATION, A/c No. 952663443, Address: A-508, Sector – 19, Noida - 201301**” within one week.
6. After receiving the compliance report, the Registry is directed to number the Appeal and post for Admission on **20.11.2014**.

(T. Munikrishnaiah)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Ts/pr