BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA No. 1787 OF 2024 IN DFR No. 478 of 2024 &
IA No. 491 OF 2025

Dated: 28th April, 2025

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

AMP Energy Green Seventeen Private Limited
Through its Authorized Signatory
309, 3rd Floor, Rectangle One,
Behind Sheraton Hotel
Saket, New Delhi- 110017 .... Appellant(s)

Versus

1. **West Bengal Electricity Regulatory Commission**
Through its Secretary
Plot No: AH/5 (2nd & 4th Floor)
Action Area 1A, Newtown
Rajarhat, Kolkata- 700163 .... Respondent No.1

2. **CESC Limited**
Through its Authorized Signatory
CESC House, Chowringhee Square
Kolkata- 700001 …. Respondent No.2

Counsel on record for the Appellant(s) : Mannat Waraich
Ananya Goswami
Mridul Gupta
Ashabari Basu Thakur

Counsel on record for the Respondent(s) : C.K. Rai for Res. 1

Sanjeev K. Kapoor
Divya Chaturvedi
Saransh Shaw

Srishti Rai
Jai Dhanani for Res. 2

ORDER

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

I.INTRODUCTION:

The present Appeal has been preferred against the Final Order passed by the WBERC in Case No. PPA-125/23-24 dated 31.08.2024 on the ground that it was an order passed without jurisdiction. The appeal was filed with a delay of 374 days and, vide the present IA, this Tribunal is called upon to examine whether the delay ought to be condoned or not. The Appellant has sought to justify the delay in filing the appeal against the Order passed by the West Bengal Electricity Regulatory Commission, in Case No. PPA-125/23-24 dated 31.08.2023, on the ground that the Impugned Order was passed by the WBERC without jurisdiction in relation to approval of PPA and adoption of tariff pursuant to the Ministry of Power's Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects, 2020**.**

II.PLEADINGS:

a.APPLICATION SEEKING CONDONATION OF DELAY:

I.A,No.1787 of 2024 in DFR No. 478 of 2024 has been filed by the applicant-appellant seeking condonation of delay of 374 days in filing the appeal. The Appeal, in DFR No. 478 of 2024, has been preferred by the appellant challenging the legality and veracity of the Final Orderpassed by the West Bengal Electricity Regulatory Commission in Case No. PPA-125/23-24 dated 31.08.2023. The appellant claims that, in the said Impugned Order, the WBERC has wrongfully assumed jurisdiction and

adopted the tariff at Rs.2.92/kWh, and has also approved the Power Purchase Agreement dated 28.06.2023 executed by Applicant and CESC Limited for purchase of 150 MW AC Wind-Solar Hybrid power for supply of power inter-state for a period of 25 years at the aforementioned rate of tariff.

In the application seeking condonation of delay, the applicant-appellant submits that, pursuant to the Impugned Order, the Applicant had proceeded with the execution of the Project; it expeditiously took various steps including making requests before the relevant party for transfer of the wind and solar capacities, entering into an Agreement for transfer of the said capacities, and thereafter undertaking various developmental activities as required for setting up of the Project; additionally, the Applicant has been submitting Monthly Progress Report pertaining to the Project to the Respondent No. 2 on a regular basis; however, the project activities were brought to a standstill due to the occurrence of certain events like cancellation of the capacity transfer proceedings with immediate effect on account of renewable energy power policies and observations of the Government of Andhra Pradesh; further, on 05.06.2024, the Government of Andhra Pradesh issued an administrative Order to the effect that any file involving allotment of lands, release of funds etc would not be further processed by any authority, thereby making it impossible for the Applicant to procure land parcels for setting up of the Project; after assessing the scenario at hand, the Applicant concluded that there would be a delay in achieving the SCOD of the Project, and such delays were on account of government actions which could be construed as Force Majeure event(s) within the provisions of the PPA; accordingly, the Applicant proceeded to issue Force Majeure Notice dated 24.07.2024 to Respondent No. 2 and, subsequently, requested for extension of SCOD

on account of Force Majeure vide its letter dated 09.08.2024; however, Respondent No. 2, vide its letter dated 22.08.2024, denied such request of the Applicant, and asked them to complete execution of the Project within the timeline prescribed under the PPA.

The applicant further states that, aggrieved by such denial by Respondent No. 2, in September/October 2024, the Applicant proceeded to take legal advise and assistance for the purpose of filing a Petition before the Appropriate Commission seeking extension of time to achieve the SCOD on account of Force Majeure; it is at this juncture, i.e. at the stage of seeking legal advise, it was brought to the attention of the Applicant that the WBERC had wrongly exercised jurisdiction for the purposes of adoption of tariff, on the basis of the TBCB Guidelines which were referred to by the Respondent in the application as filed for adoption of tariff; the Applicant, immediately on becoming aware about the legal infirmities involved in the Impugned Order, proceeded to prefer an Appeal before this Tribunal; the Applicant was under a bona fide belief that the WBERC had rightly assumed jurisdiction on the basis of the application filed by Respondent No. 2 before the WBERC for adoption of tariff; and the same can also be inferred from the actions of the applicant as it did not raise any objection at the time of tariff adoption proceedings pursuant to which the Impugned Order was passed, and diligently proceeded with the execution of the Project, by undertaking the critical activities.

The applicant-appellant further submits that the decision of preferring the present Appeal took considerable time as the applicant was under the bona fide belief that the WBERC had rightly assumed jurisdiction in the matter; therefore, the reasons for delay of 374 days in filing the present Appeal were *bona fide* and genuine; the Applicant filed the present appeal at the earliest possible opportunity in the given

circumstances, by exercising earnestness; as such, the delay in filing the Appeal was unintentional, and this Tribunal may condone the same, in the interest of justice.

The applicant-appellant also submits that the question of jurisdiction goes to the root of the matter, and can be raised at any point in time; further, if the Appeal is rejected solely on the ground that there was delay in preferring an Appeal before this Tribunal, a wrong precedent will be set by virtue of the Impugned Order, and effectively lead to denial of substantial justice; it will also result in taking a hyper technical view, and of a pedantic reading of the law; the aforementioned reasons ought to be considered "sufficient cause" for exercise of discretionary power by this Tribunal, and the delay in preferring the Appeal should be condoned; it is settled principle of law that the meaning of every day's delay must be explained is not to be construed and applied literally, and courts of law ought to apply the law in a meaningful manner which sub serves the ends of justice; and it is also trite law that the term "*sufficient cause*" employed by the legislature has to be interpreted in the spirit and philosophy of law. Reliance is placed in this regard on (1) ***N. Balakrishnan v. M. Krishnamurthy, 1998 (2) CTC 533;*** (2) ***Collector, Land Acquisition, Anantnag & Anr. V. Mst. Katiji & Ors. (1987) 2 SCC 107*****;** and (3) ***Gulbarga Electricity Supply company Limited v. JSW Steel Limited & Ors.***, (judgment of this Tribunal in I.A. No. 139 of 2013 in D.F.R. (R.P.) No. 631 of 2013 in Appeal No. 167 of 2011 dated 01.08.2014) .

The appellant-applicant then states that, in the present case, they were under the bona fide belief, and the question of jurisdiction can be raised at any point in time; this amounts to *sufficient cause* for the delay of 374 days caused in filing the present Appeal; the present Appeal also involves an important question of law which needs to be decided by this

Tribunal, i.e. whether the exercise of jurisdiction by a State Commission i.e., Respondent No. 1 for purposes of adopting the tariff for a Project supplying power inter-state was justified; a wrong precedent will be set by virtue of the Impugned Order as the same is fraught with legal infirmities and wrongful interpretation of the Act; the Applicant has a good case on merits and, therefore, this Tribunal must uphold substantive justice over technical points; in the event, the present Application, seeking condonation of delay in filing the Appeal, is not allowed by this Tribunal, grave and severe injustice would be caused to the Applicant; no prejudice would be caused to the Respondents if the Appeal is admitted for hearing and disposal; on the other hand, irreparable and irretrievable harm and loss will be caused to the Applicant, if the Applicant is not allowed to contest the Impugned Order; and the Applicant seeks the indulgence of this Tribunal to allow the present Application and consequently admit the Appeal.

b. REPLY FILED BY THE FIRST RESPONDENT COMMISSION:

The first respondent submits that, beside contending that they were under the bonafide belief that the State Commission had jurisdiction for the purposes of adoption of tariff, the appellant has failed to disclose any reason as to why the appellant took so much time in approaching this Tribunal against the order dated 31/08/2023 passed by the State Commission; the delay of 374 days in filing the present appeal is a substantial delay, and no other reason is stated in the condonation of delay application; Section 111 of the Electricity Act, 2003 requires the applicant to show sufficient cause for delay in filing the appeal; and the Appellant has failed to show sufficient cause for not filing the Appeal within the stipulated time period of 45 days

While denying that the State Commission had no jurisdiction to approve the PPA dated 28/06/2023 executed by the Appellant and Respondent No. 2, and to adopt the tariff agreed upon by the parties, the first respondent submits that the appeal filed and the reasons raised to challenge the impugned order seems to be an after-thought, and made to wriggle out from the liabilities arising from non-fulfilling the terms of the PPA by failing to commission the plant within the SCOD date of 28/06/2025; it is trite law that, while considering the plea for condonation of delay, the court must not start with the merits of the main matter; the court must first ascertain the *bona fides* of the explanation offered by the party seeking condonation of delay; the present Application filed by the appellant lacks bonafides as the issue of jurisdiction was raised only after its request for extension of SCOD was rejected by Respondent No. 2; the parties to the PPA applied to the State Commission for approval and adoption of tariff as per para 5 of the *"Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Soar Hybrid Projects" (CBG)* dated 14/10/2020; the above clause of the CBG was also relied by the parties in the Petition before State Commission, and the same was also relied by the State Commission in passing the impugned order; Section 86(1)(b) of the Electricity Act, 2003 confers jurisdiction upon the State Commission to regulate electricity purchase and procurement process of a distribution licensee; the submission of the appellant that the CBG should be read subject to the provisions of the Electricity Act, 2003, as per which CERC shall have jurisdiction in the present case also, falls foul of Section 64 [5] of the Electricity Act 2003, which provision was examined by the Supreme Court in **Energy Watchdog Vs CERC & Ors. (2017) 14 SCC 80***;* the West Bengal State Electricity Regulatory Commission has the jurisdiction to

approve the PPA and adopt the tariff of Rs. 2.92/kWh as agreed by the parties, and the Appellant, at this stage, cannot rescind the PPA in the garb of lack of jurisdiction of the State Commission. Reliance is placed in this regard on ***Ramlal v. Rewa Coalfields Ltd. [AIR 1962 SC 361].***

It is further submitted that the delay of 374 days in filing the present appeal is a substantial delay and the reason stated in the condonation of delay application does not constitute 'sufficient cause' for which discretion can be exercised by this Tribunal in their favour. Reliance is placed on the judgements of this Tribunal in ***Chamundeshwari Electricity Supply Corporation Limited v. Fortum Solar India Private Limited & Anr.*** (DFR No. 217 of 2024 &I.A. No. 694 OF 2024 & I.A. No. 695 OF 2024 dated 16/08/2024); and (2) Order in ***Jharkhand Bijli Vitran Nigam Ltd. V. Grasim Industries Ltd. & Anr*** (DFR No. 370 of 2024 & IA No. 1305, 1306, & 1307 of 2024 dated 05/09/2024).

It is further submitted that the Applicant-Appellant cannot be permitted to invoke the appellate jurisdiction of this Tribunal, after an inordinate delay of 374 days as their conduct shows complete lack of diligence in endeavouring to file the appeal within the period of limitation; the appellant has failed to show sufficient cause for the delay in filing the present appeal; the delay is not bona fide and is not liable to be condoned; and, since the Appellant has failed to show sufficient ground for condonation of delay of 374 days, the application seeking condonation of delay is liable to be dismissed.

c. REPLY FILED ON BEHALF OF THE 2ND RESPONDENT:

It is submitted by the 2nd Respondent that, on 28.06.2023, the Appellant and the Answering Respondent had entered into a Power Purchase Agreement for supply of 150 MW of power from the Wind-Solar Hybrid Power Plant proposed to be set-up by the Appellant; in terms of

Clause 1.1 of the aforesaid PPA, the Scheduled Commercial Operation Date of the project was 28.06.2025; on 04.07.2023, the 2nd Respondent filed an Application being Case No. PPA-125/23-24 before the West Bengal Electricity Regulatory Commission seeking approval of the aforesaid PPA entered into between the parties and also for adoption of tariff of Rs. 2.92 kWh discovered through the competitive bidding procedure carried out by the 2nd Respondent; the Appellant was also a party to the said proceedings, and was duly served with the Application filed by the 2nd Respondent vide email; on 31.08.2023, the WBERC passed the Impugned Order approving the PPA dated 28.06.2023, and adopting the tariff of Rs. 2.92 kWh; pursuant to signing the aforesaid PPA and approval of the same by the WBERC, allotment of solar and wind capacities to the Appellant were allegedly revoked by the nodal agency of Andhra Pradesh vide letter dated 05.06.2024 as per the submission of the Appellant; the Appellant has relied upon the said letter dated 05.06.2024 to contend that, in the wake of the same, it was contemplating seeking extension when it realized that the jurisdiction of the WBERC was invoked incorrectly; in other words, the Appellant has pleaded ignorance regarding jurisdiction of the Appropriate Commission, not only after passing of the Impugned Order but also after being a party to the proceedings before the WBERC; while the aforesaid fact has been disclosed by the Appellant in the present Appeal, it has failed to bring the aforesaid letter on record in the present Appeal; and, for completion of facts, the Answering Respondent is bringing on record the aforesaid letter dated 05.06.2024.

The 2nd Respondent would further submit that, on 18.10.2024, the Appellant approached the Central Electricity Regulatory Commission by way of Petition No. 506/MP/2024 seeking extension of SCOD on the ground that the letter dated 05.06.2024 issued by the Government of

Andhra Pradesh was a force majeure event; pursuant to filing of the said Petition before the. CERC on 18.10.2024, the Appellant on 23.10.2024 filed the present Appeal as an afterthought, whereby they have sought setting aside of the Impugned Order, by way of which the PPA signed between the Appellant herein and the 2nd Respondent was approved by the WBERC, and the tariff of Rs. 2.92/kWh was adopted; and these facts disclose the *malafides* on part of the Appellant in approaching both the CERC and this Tribunal simultaneously; and the Appellant has failed to establish sufficient cause for condonation of delay in filing the Appeal

It is further submitted, on behalf of the 2nd Respondent, that, for condonation of the inordinate delay of 374 days, “sufficient cause,” is required to be shown by the Appellant justifying its inability in filing the Appeal within the prescribed time period; "sufficient cause" means that the party should not have acted in a negligent manner or there was no want of *bona fides* on its part in view of the facts and circumstances of a case, or it cannot be alleged that the party has "not acted diligently" or "remained inactive"; the Appellant must satisfy this Tribunal as to how it was prevented by “sufficient cause” from prosecuting the case; unless a satisfactory explanation is furnished, this Tribunal should not allow the present application for condonation of delay; the Court has to examine whether the mistake is *bona fide* or was merely a device *to cover an ulterior purpose* (Refer: Order in **Wardha Solar (Maharashtra) Private Limited & Others vs. Central Electricity Regulatory Commission & Ors** (**DFR No. 32 of 2024 & IA No. 108 of 2024 & IA No. 110 of 2024 dated 22.08.2024)** where reliance was placed upon the judgment of the Supreme Court in **Basawaraj vs. Land Acquisition Officer, (2013) 14 SCC 81**; the only purported justification provided by the Appellant, for filing the Appeal with such inordinate delay, is that when it was contemplating

to file the Petition seeking extension of time to achieve the SCOD before the CERC, it became aware of the fact that the WBERC has wrongly exercised jurisdiction for the purposes of tariff adoption.

It is submitted, on behalf of the 2nd Respondent, that it is established principle of law that ignorance of law is no excuse; the Appellant cannot seek to justify the delay in filing the present Appeal on account of an alleged mistake of law and / or ignorance of law on its part; in **Sitaram Ramcharan vs. M.N. Nagarshana, 1959 SCC OnLine SC 89**, the Supreme Court held that ignorance of law cannot be a sufficient cause for condoning an inordinate delay.

Placing reliance on **H. Guruswamy and Others vs. A. Krishnaiah Since Deceased by LRS., 2025 SCC OnLine SC 54,** it is submitted that that every individual as well as companies / institutions / business houses are deemed to know the law of the land and ignorance of law cannot be used as an excuse for not taking appropriate steps within the limitation period. Reliance is also placed in this regard on **Swadeshi Cotton Mills Co. Ltd. vs. Government of Uttar Pradesh & Ors**. (Judgement in **Civil Appeal No. 2285 of 1969** dated 10.11.1972). It is further submitted that the Appellant was a party Respondent before the WBERC in Case No. PPA-125/23-24, filed by the 2nd Respondent seeking adoption of tariff and approval of the PPA dated 28.06.2023 entered into between the parties; the Appellant was also duly served with a copy of the Petition as well as the Impugned Order vide email; the appellant cannot, therefore at this belated stage, take the plea that the WBERC lacked jurisdiction to decide the aforesaid Case No. PPA-125/23-24, as the Appellant could have raised the said plea before the WBERC itself; the present Appeal has only been filed with the ulterior motive of justifying its inability to commission the Project within the SCOD prescribed under the PPA; and an objection

regarding place of suing cannot be raised before an appellate or revisional court without fulfilment of the 3 (three) conditions mentioned in Section 21(1) of the CPC.

It is submitted, on behalf of the 2nd Respondent, that the Appellant has preferred the present Appeal to wriggle out of its contractual obligations, which it has undertaken with its eyes open, but has also indulged in forum shopping as it has, on the one hand, filed a Petition before the CERC seeking extension of SCOD and, on the other hand, it has filed the present Appeal challenging the approval of the PPA dated 28.06.2023 entered into between the Appellant and the 2nd Respondent in terms of which the Appellant is seeking extension of the SCOD vide its Petition before the CERC (Refer: **Kalyaneshwari vs. Union of India, (2011) 3 SCC 287**); the Appellant cannot be allowed to blow hot and cold at the same time; before the CERC it is seeking extension of SCOD (and thus seeking relief under the PPA) and before this Tribunal it is seeking setting-aside of the Impugned Order vide which the PPA and tariff itself were approved (Refer: **R.N Gosain vs. Yashpal Dhir (1992) 4 SCC 683**); the Appellant has only filed this Appeal as an afterthought to wriggle out of its liabilities under the PPA; those who enter into contract with open eyes must accept the burden of the contract along with its benefits (Refer: (i) **Har Shankar & Ors. vs. DY. Excise and Taxation Commissioner & Ors. (1975) 1 SCC 737 (Para 16)**; and (ii) **Haryana Power Purchase Centre vs. Sassan Power Limited & Ors. 2023 SCC Online SC 577 (Para 95 & 96);** the Appellant, only after realizing that it will not be in a position to commission the Project within the SCOD stipulated under the PPA on account of its own negligence, decided to file a frivolous petition before the CERC, and simultaneously also filed the present Appeal before this Tribunal; the Appellant chose to remain silent and continued to

acquiesce and act upon the Impugned Order by trying to commission the Project as per the PPA as per its own admission; however, only when there was delay on its part in commissioning the Project within the SCOD, it proceeded to file the Petition before the CERC as well as the present Appeal; both the aforesaid Petition and the present Appeal were filed after more than 1 (one) year of the Impugned Order being passed; the Appellant cannot be permitted to indulge in forum shopping, as the same would amount to an abuse of law in terms of established legal position. (Refer: **Vijay Kumar Ghai vs. State of W.B., (2022) 7 SCC 124);** the application lacks *bona-fides,* and the Appellant has approached this Tribunal with *malafide* intentions; and the Appellant has completely failed to provide sufficient cause for condonation of the inordinate delay in filing of present Appeal.

It is further submitted on behalf of the 2nd Respondent that, in terms of clauses 3.3.3 and 4.6 of the PPA, the Performance Bank Guarantee of the Appellant is liable to be encashed in case of delay in commencement of power supply beyond Scheduled Commissioning Date; it is clear that the Appellant is trying to wriggle out of its obligations to pay liquidated damages in terms of the aforesaid provisions of the PPA by seeking setting aside of the Impugned Order, by way of which the PPA signed between the Appellant herein and Answering Respondent was approved by the WBERC; the WBERC was the Appropriate Commission as per Clause 5.1(a) of the WSH Guidelines; the Appellant has, in the Application for condonation of delay, erroneously made a misleading submission that it was only during the time when it was contemplating to file appropriate Petition for seeking extension of time to achieve the SCOD, it became aware as to the fact that th WBERC has wrongly exercised the jurisdiction for the purposes of Tariff adoption; the Appellant was a party Respondent

before the WBERC and had ample opportunity to raise such an objection earlier; however the Appellant chose to remain silent on the said aspect and continued to acquiesce and act upon the Impugned Order by trying to commission the Project as per the PPA; it is established principle of law that ignorance of law is no excuse; the Appellant cannot seek to justify the delay in filing the present Appeal on account of an alleged mistake of law and / or ignorance of law on its part; the judgments relied on behalf of the appellant clearly lay down that delay of very long range can be condoned only if the explanation provided is satisfactory and once the Court accepts the explanation as *sufficient*; in **Wardha Solar (Maharashtra) Private Limited & Others vs. Central Electricity Regulatory Commission & Ors** (Order in DFR No. 32 of 2024 & IA No. 108 of 2024 & IA No. 110 of 2024 dated 22.08.2024) this Tribunal has held that "*the cause which the applicant is required to show should not only be adequate enough to justify his failure to file an appeal within the period of limitation, but also such as would justify condonation of the delay in invoking the appellate jurisdiction of this Tribunal beyond the stipulated period of limitation of 45 days"*; filing of the present Appeal is merely an afterthought, as the Appellant decided to file the present Appeal (with an inordinate delay of more than one year) realizing that it would fail to commission the Project within the prescribed SCOD i.e., 28.06.2025 in terms of clause 1.1 of the PPA; the present Appeal has only been filed with the ulterior motive of justifying its inability to commission the Project within the SCOD prescribed under the PPA; and the Application seeking condonation of delay filed by the Appellant is not maintainable.

III.IMPUGNED ORDER:

The 2nd Respondent submitted an application dated 04.07.2023, seeking approval of the Power Purchase Agreement (PPA) executed

on 28.06.2023 by and between the appellant and the 2nd Respondent, for procurement of 150 MW Wind-Solar Hybrid power at the discovered tariff through the competitive bidding process undertaken by it, under Section 63, Section 86 (1) (b), Section 86 (1) (e) and other applicable provisions of the Electricity Act, 2003, and in terms of the applicable Regulations of the West Bengal Electricity Regulatory Commission. The Commission admitted the application in Case No. PPA —125/23-24 on 21.07.2023.

In its application, the 2nd Respondent stated that it had initiated a Tariff Based Competitive Bidding process for selection of Wind-Solar Hybrid Power Developers ("HPD") for setting up of 150 MW ISTS-connected Wind-Solar Hybrid Power Projects to be installed anywhere in India on Build Own Operate (BOO) basis with the primary objective of supplying Wind-Solar Hybrid Power to them for a period of 25 years, under the provisions of the Request for Selection ("RfS") dated 08.02.2023 through the e-procurement portal; the bidding had been conducted in terms of the "Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects" (CBG) dated 14.10.2020, along with amendments, issued by the MNRE, Government of India under the National Wind-Solar Hybrid Policy dated 14.05.2018. Bid documents were prepared according to the bid documents of the Solar Energy Corporation of India Limited ("SECI") which were in accordance with the CBG.The appellant had emerged as the successful L1 bidder quoting a tariff of Rs. 3.07/kWh which was well within the average power purchase cost of the 2nd Respondent and was also comparable with the competitively determined tariff already adopted by the Commission for various distribution licensee

of the State; in the interest of its consumers. The 2nd Respondent had entered into post-bid consultations with the appellant to explore the possibility of further reduction in the offered tariff from the L1 bid; post consultations, the appellant had agreed to enter into the PPA at a reduced rate of Rs. 2.92/kWh for the entire contract period; and, accordingly, letter of award (LoA) was issued to the appellant on 29.05.2023.

The WBERC noted that clauses 13.1 and 16.1 of the CBG allowed a successful bidder to supply renewable power through an SPV; in terms of Clause 36.6 of the RfS and para 5 of the LOA, the appellant, ie the successful bidder, had decided to develop the Project through the HPD, the above-mentioned SPV, from which it would supply renewable power to the 2nd Respondent; pursuant to the above, the 2nd Respondent had executed the PPA with the HPD on 28.06.2023 in accordance with the terms and conditions of the LoA issued to the appellant. The 2nd Respondent had agreed to purchase 150 MW Wind-Solar Hybrid Power from the appellant from the Wind-Solar Hybrid Power Project (with rated capacity of Solar PV: 137.5 MW and Wind: 49.5 MW) to be installed by the HPD at Village: Uppalapadu. Junutula, Tehsil: Owk, District: Nandyala, Andhra Pradesh; accordingly, the 2nd Respondent had signed a Power Purchase Agreement (PPA) with the HPD on 28.06.2023 (Effective Date of the PPA) for purchase of 150 MW Wind-Solar Hybrid power for a period of 25 years from the `Scheduled Commissioning Date' (SCD) of the project; in terms of Clause 9.2 of RfS, `the Scheduled Commissioning Date' was 28.06.2025 (24 months from the Effective Date of the PPA i.e 28.06.2023); the tariff for procurement of the 150 MW Wind-Solar Hybrid Power was a fixed tariff of Rs. 2.92 per kWh for

the entire term of the PPA (25 years from SCD); the power shall be delivered by the power developer at its interconnection point with Inter State Transmission System at single point or multiple points at 220 KV level at 765/400/220kV Kurnool-III ISTS substation, Andhra Pradesh; and all charges and losses up to the Delivery Point shall be borne by the HPD.

The WBERC then noted the submission that the PPA would reduce dependence on power exchanges to meet the Renewable Purchase Obligation (RPO). help to improve renewable energy portfolio and meet the increasing demand in the 2nd Respondent's licensed area in the coming years; in terms of Order No. 23/12/2016-R&R dated 23.11.2021 of the Ministry of Power. ISTS Charges will not be applicable for renewable energy projects, including solar, wind etc. commissioned up to 30.06.2025; however, as per Clause 2.1.3 and 2.1.4 of the PPA between the HPD and the 2nd Respondent, in case tariff adoption and/ or approval of the PPA by the Commission gets delayed beyond 120 days from the effective date of the PPA (which is 28.06.2023), the scheduled financial closure and scheduled Commissioning Date of the Projects will also get extended by equal number of days; and, in view of the above, the 2nd Respondent had prayed an early approval of the petition dated 04.07.2023 in consumer interest.

The WBERC observed that it was being guided by the Tariff Policy; the Ministry of Power (MOP), vide Order dated 22.07.2022, had specified the long-term growth trajectory of Renewable Purchase Obligation upto 2029-30 in terms of paragraph 6.4 (1) of the Tariff Policy, 2016; as per the PPA, the 2nd Respondent would get minimum

448.2 MU quantum of energy annually from Wind-Solar Hybrid Project; in FY 2021 - 22, the 2nd Respondent could not achieve Total RPO target set in terms of West Bengal Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2013; and, thus,. this PPA would help CESC to improve its RE portfolio.

On the price of power purchase, the WBERC observed that, as per the Power Purchase Agreement, the 2nd Respondent would purchase 150 MW Solar Wind Hybrid Power from the appellant at Rs. 2.92 per kWh, as per the provisions of the PPA/RfS, fixed for the entire term of the agreement; the Tariff had been determined through a transparent process of competitive bidding in accordance with the 'Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects' dated 14.10.2020, along with amendments, issued by the Government of India; the procurement process was under Section 63 of the Electricity Act, 2003 and the appellant was selling such power at the discovered price to the 2nd Respondent; the Tariff was well below the average power purchase cost of the 2nd Respondent and, thus, economical as compared to the other power purchase sources approved in the Tariff Order of 2020-21, 2021-22 and 2022-23.

The Commission noted that the appellant, selected in the Competitive Bidding Process, had constituted a Special Purpose Vehicle (SPV) which was acting as HPD for development, generation and supply of such electricity to the 2nd Respondent from the 150 MW Hybrid Power Project, to be established by the HPD in Andhra Pradesh. After reproducing the relevant para 5 of the "Guidelines for

Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects" (CBG) dated 14.10.2020, as amended, the WBERC observed that, since the entire power generated from the ISTS-connected Wind-Solar Hybrid Power Projects would be delivered to the 2nd Respondent in West Bengal; the WBERC was the appropriate Commission as per the CBG; however, in terms of Regulation 7.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2011, the 2nd Respondent was to take prior approval of the Commission for effectuating any agreement for power procurement.

The WBERC also observed that no inter-state transmission charge will be levied on transmission of electricity generated from solar and wind sources through ISTS for sale of power by the projects to be commissioned within 30.06.2025 for 25 years from the date of commissioning of the project as per the notification of the Ministry of Power dated 23.11.2021 read with amendment dated 30.11.2021; the scheduled commissioning date of the proposed Wind-Solar Hybrid project was 28.06.2025 with 24 months from 28.06.2023 - the effective date of the PPA; thus no ISTS charges would be applicable; and further, as per clause 4.2.6 of the PPA between the 2nd Respondent and HPD, the ISTS charges would be borne by the Hybrid Power Generator in case of any delay in commissioning of the project beyond 30.06.2025 due to reasons attributable to the project developer.

In view of the above, the Commission concluded the following: (i) the hybrid power will help the 2nd Respondent to meet

its RPO target, improve renewable energy portfolio and meet the increasing demand in CESC's licensed area in the coming years; (ii) the price being discovered following the competitive bidding guidelines issued by the Government of India under Section 63 is stand-alone, economic and was beneficial to end consumers; and (iii) no ISTS charges for the above Wind-Solar Hybrid power was expected to be paid.

The Commission, after considering the above facts and in order to promote procurement of renewable energy by the 2nd Respondent to fulfil its obligation, and further keeping in mind clause (e) of sub-section (1) of Section 86 of the Act. approved the Power Purchase Agreement dated 28.06.2023 executed by and between the appellant and the 2nd Respondent for purchase of 150 MW Wind-Solar Hybrid power by the 2nd Respondent from the appellant for a period of 25 (twenty-five) years at a uniform price of Rs. 2.92 per kWh for the entire period of the PPA, in terms of Regulation 7.4.1 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011. as amended. The Commission also directed the 2nd Respondent to comply with the provisions of applicable law regarding scheduling as per the provisions of intra-state ABT, State Grid Code, etc. The petition was thus disposed of.

IV.RIVAL CONTENTIONS:

Elaborate submissions, both oral and written, were made by Sri Sujit Ghosh, Learned Senior Counsel appearing on behalf of the appellant, Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the 2nd Respondent, and Sri. C.K. Rai, Learned Counsel appearing

on behalf of the respondent-commission. It is convenient to examine the rival submissions under different heads.

V. IS LIMITATION INAPPLICABLE WHERE A PLEA IS RAISED THAT THE IMPUGNED ORDER IS WITHOUT JURISDICTION?

A.SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT COMMISSION:

On the Appellant's contention that they were under the bona fide belief that the Respondent Commission had rightly assumed jurisdiction till they sought legal advice on denial of extension of SCOD by Respondent No. 2, and it was then that they realized that the State Commission had wrongly exercised jurisdiction for the purpose of adoption of tariff on the basis of the TBCB Guidelines, Sri. C.K. Rai, Learned Counsel for the 1st Respondent-Commission, would submit that the delay of 374 days in filing the present appeal constitutes substantial delay, and *"no sufficient cause"* has been provided in the application for condonation of delay; it is trite law that, while considering the plea for condonation of delay, the court must not start with the merits of the main appeal; the court must first ascertain the *bona fides* of the explanation offered by the party seeking condonation of delay; and the present Application, filed by the appellant, lacks bonafides as the issue of jurisdiction was raised only after its request for extension of SCOD was rejected by Respondent No. 2. (**Re:-H. Guruswamy & Ors. Vs. A. Krishnaiah since Deceased by Lrs.: 2025 SCC Online SC 54, Para 16).**

Relying on **Ramlal v. Rewa Coalfields Ltd : AIR 1962 SC 361, para 7 & 12,** Sri. C.K. Rai, Learned Counsel for the 1st Respondent Commission, would further submit that it is only when there is neither negligence nor inaction nor want of bonafides imputable to the appellant, can "sufficient cause" be construed liberally.

B. SUBMISSIONS URGED ON BEHALF OF THE SECOND RESPONDENT:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the second respondent, would submit that It is settled law that "sufficient cause," and bonafide reasons leading to the delay are required to be established by the litigant to justify its inability to file the Appeal within the prescribed time period, which the appellant has failed to do; in this regard, reliance is placed upon the following judgments: (i) **Wardha Solar (Maharashtra) Private Limited & Others vs. Central Electricity Regulatory Commission & Ors:** (Order in **DFR No. 32 of 2024 & IA No. 108 of 2024 & IA No. 110 of 2024** dated 22.08.2024)**; and (ii) Basawaraj vs. Land Acquisition Officer, (2013) 14 SCC 81;** the appellant has failed to show sufficient cause for condonation of delay as is clear from its application seeking condonation of delay, wherein it is clearly stated that the appellant was under the belief that the WBERC is the appropriate forum, and it was only at the stage of seeking legal advice regarding extension of SCOD that the appellant realized that the Impugned Order is allegedly without jurisdiction;

C.SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri. Sujit Ghosh, Learned Senior Counsel for the appellant, would submit that an order without jurisdiction being a nullity, limitation ought not to come in the way; in other words, through efflux of time, an order without jurisdiction cannot become an Order within jurisdiction; an Order without jurisdiction being a nullity, would be incurably bad **(**Ref**: Lord Denning** quoted in **Rangku Dutta v. State of Assam, (2011) 6 SCC 358,** on the concept of incurability**);** such an incurably bad Order cannot become curably bad by application of the law of limitation; further, every proceeding founded on such an Order which is a nullity, is also bad and

incurably bad. (Ref: ***Mukhtiar Singh v. State of Punjab, (DB) 1993 SCC OnLine P&H 18,*** and ***State of Madhya Pradesh v. Syed Qamarali (CB), 1961 SCC OnLine SC 9,*** where it was held that limitation cannot apply in case of Orders without jurisdiction); the Constitution Bench judgment in **Syed Qamarali** was dealt and differed with by a three Judge Bench of the Supreme Court in ***State of Punjab v. Gurdev Singh, (1991) 4 SCC 1***; however, in delivering the subsequent judgment by a lesser corum, it could not have deviated from the Constitution Bench judgment and, to that extent, it is an erroneous precedent (Refer: ***Dawoodi Bohra v. State of Maharashtra and Anr., (CB) (2005) 2 SCC 673*****)**; under such a scenario, this Tribunal ought to follow the law laid down by the Constitution Bench, and not the subsequent three Judge Bench; and, on the aspect of resolution of conflicting decisions of the Supreme Court, reliance is placed upon ***Bholanath Karmakar v. Madanmohan Karmakar, (Full Bench) 1987 SCC OnLine Cal 212.***

Sri. Sujit Ghosh, Learned Senior Counsel, would further submit that the conclusion, in **Gurdev Singh,** was inspired by the observation made by Prof. Wade at para 9 of the judgment; in the said para, reference was made to the concept of waiver as one the reasons based on which proceedings may not have been taken out within limitation; this observation inherently suggests that perhaps the observations were not made qua an Order without jurisdiction, since it is well known that doctrine of waiver/acquiescence never applies to such cases; in respect of Orders without jurisdiction, procedural law like *res judicata, estoppel, waiver* cannot be pressed into service; since the law of limitation is a law of repose based on the rule of estoppel, it ought not to be made applicable in case an Order is passed without jurisdiction (***Raju Ramsing v. Mahesh Deorao, (DB) (2008) 9 SCC 54; Begum Shanti Tufail, (SB) 2005 SCC***

***OnLine All 1270, Para 21*);** and it is well settled that- (a) law of limitation is a procedural law where it affects remedies (as opposed to substantive rights); and (b) procedure, being a hand-maiden of justice, cannot scuttle substantive justice (where pleas such as jurisdictional error have been set up).

Sri. Sujit Ghosh, Learned Senior Counsel, would also submit that, since jurisdiction strikes at the root of an adjudication order, the present appeal is *sui generis* in nature, and is not a case involving error within jurisdiction (with respect to which appellate remedies are mostly sought); jurisdiction being a vital aspect, a justice-oriented approach ought to be adopted in condoning the delay, and limitation ought not to scuttle such a meritorious *lis* (Refer: ***Inder Singh v. State of Madhya Pradesh (DB) 2025 SCC OnLine SC 600*);** and, while in that case ownership of the land by the Government made the appeal meritorious, in the present case, the impugned order having been passed without jurisdiction is the meritorious aspect.

D.JUDGEMENTS RELIED UPON UNDER THIS HEAD:

1. In **H. Guruswamy v. A. Krishnaiah, 2025 SCC OnLine SC 54,** (on which the first respondent places reliance upon), the Supreme Court held that the length of the delay was definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not; from the tenor of the approach of the respondents herein, it appeared that they wanted to fix their own period of limitation for the purpose of instituting the proceedings for which law had prescribed a period of limitation; once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the

substantial justice deserves to be preferred as against the technical considerations; while considering the plea for condonation of delay, the court must not start with the merits of the main matter; the court owes a duty to first ascertain the *bona fides* of the explanation offered by the party seeking condonation; it is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

2. In **Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39 : AIR 1962 SC 361,** (on which the first respondent places reliance upon), the Supreme Court held that, in construing Section 5 of the Limitation Act, it is relevant to bear in mind two important considerations; the first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties; in other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed; the other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the court to condone delay and admit the appeal; this discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice; as observed by the Madras High Court, in **Krishna v. Chathappan: (1890) ILR 13 Mad 269,** Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words ‘sufficient

cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant; it is, however, necessary to emphasise that, even after sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right; the proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5; if sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone; if sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay; this aspect of the matter naturally introduces the consideration of all relevant facts, and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant.

3. In Wardha Solar (Maharashtra) (P) Ltd. v. CERC, 2024 SCC OnLine APTEL 80, (on which reliance is placed on behalf of the 2nd Respondent) this Tribunal held that Section 111(2) of the Electricity Act prescribes a period of limitation of 45 days in filing the appeal, and the proviso thereto enables the delay in filing the appeal to be condoned only on sufficient cause being shown; unlike in *N. Balakrishnan* v. *M. Krishnamurthy*, (1998) 7 SCC 123 where the Supreme Court was satisfied with the explanation furnished for the delay of 883 days as, what the appellant did, in defending the suit, was not very far from what a litigant would broadly do; and, his omission to adopt extra vigilance, in visiting his advocate at short intervals to check up the progress of the litigation, would not justify his being depicted as an irresponsible litigant, in the present case the explanation furnished for the delay does not constitute sufficient

cause for its condonation; as held by the Supreme Court, in Ramlal v. Rewa Coalfields Ltd., 1961 SCC OnLine SC 39 : AIR 1962 SC 361 and V. Balwant Singh v. Jagdish Singh, (2010) 8 SCC 685, expiration of the period of limitation prescribed for filing an appeal gives rise to a right in favour of the respondent to treat the order of the commission as binding between the parties; and, save sufficient cause, this legal right which has accrued to the respondents, by lapse of time, should not be lightly disturbed, particularly when the delay is directly as a result of negligence, default or inaction of the Applicant-Appellant.

On the contention, urged on behalf of the Appellant, that a liberal approach should be adopted, this Tribunal held such an approach would not justify condonation of delay in the present case, as the concept of liberal approach has to encapsulate the concept of reasonableness, it cannot be allowed a totally unfettered free play, the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration, the scale of balance of justice should be weighed in respect of both parties, the said principle cannot be given a total go-by in the name of liberal approach, and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone. (***Brijesh Kumar* v. *State of Haryana*, (2014) 11 SCC 351; *Esha Bhattacharjee* v. *Raghunathpur Nafar Academy*, (2013) 12 SCC 649)**; the word “cause” in the proviso to Section 111(2) is preceded by the word “sufficient”; it is not every cause for the delay which can be condoned, as this Tribunal should record its satisfaction that there was sufficient cause, justifying condonation of delay; Merriam Webster Dictionary defines the word “*sufficient*” to mean enough to meet the needs of a situation or a proposed end; “Sufficient cause” means an adequate and enough reason

which prevented the appellant to approach the court within limitation. (**Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81);** consequently, the cause which the applicant is required to show should not only be adequate enough to justify his failure to file an appeal within the period of limitation, but also such as would justify condonation of the delay in invoking the appellate jurisdiction of this Tribunal beyond the stipulated period of limitation of 45 days.

4. **In Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81,** (on which reliance is placed on behalf of the 2nd Respondent), the Supreme Court held that sufficient cause is the cause for which the defendant could not be blamed for his absence; the meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended; therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man; in this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive"; however, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that, whenever the court exercises discretion, it has to be exercised judiciously; the applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay; the court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.

(See: Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee: AIR 1964 SC 1336 , Mata Din v. A. Narayanan: (1969) 2 SCC 770, Parimal v. Veena [(2011) 3 SCC 545, and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai: (2012) 5 SCC 157); in Arjun Singh v. Mohindra Kumar: AIR 1964 SC 993, the Supreme Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa; however, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

5. In **Sitaram Ramcharan vs. M.N. Nagarshana, 1959 SCC OnLine SC 89**, (on which reliance is placed on behalf of the 2nd Respondent), the appellants, employees in the Watch & Ward Department of various textile mills in Ahmedabad, filed applications before the authority under the Payment of Wages Act, and claimed overtime wages. These applications were accompanied by another set of applications in which they prayed for condonation of delay made in putting forward the claim for overtime wages. The authority considered the case made out by the appellants for condonation of delay and held that they had failed to prove sufficient cause for not making their applications within the prescribed period. The appellants then moved the High Court at Bombay under Articles 226 and 227 of the Constitution. These applications also failed and were dismissed. Then the appellants moved the High Court for a certificate, and a certificate was granted to them. It is with this certificate that they have come to this Court.

In their applications for condonation of delay, the appellants had alleged that they had bona fide believed that neither the Factories Act nor the Bombay Shops and Establishments Act applied to the Watch & Ward

Staff, and so they had moved the industrial court for redress of their grievances; and the step thus taken by the appellants showed that in asserting their rights they were exercising due diligence and care. This claim was resisted by the employers on two grounds; it was urged by them that the main ground alleged by the appellants for claiming condonation of delay amounted to a plea of ignorance of law, and that ignorance of law cannot be a sufficient cause under the relevant provision. It was also contended that no sufficient or satisfactory reasons had been given by the appellants for the delay made by them in filing the present applications.

The authority upheld both these contentions raised by the employers. It considered the judicial decisions cited before it, and held that, even if the appellants were ignorant of their rights, such ignorance of law cannot be said to be a sufficient cause. It also examined the conduct of the appellant, and held that the said conduct did not justify the appellants' claim that they were acting bona fide and with due diligence in asserting their rights.

When this decision was challenged by the appellants before the High Court, by way of their petitions under Articles 226 and 227, apparently the only point urged before the High Court was that the authority was in error in holding that an error of law cannot be a sufficient cause for condonation of the delay. The attention of the High Court was not drawn to the second finding made by the authority, and so, that aspect of the matter was not considered by the High Court. Dealing with the point raised before it, the High Court agreed with the view taken by the authority, and held that ignorance of law cannot constitute “sufficient cause”.

It is in this context that the Supreme Court observed that the principal question which had been agitated in the High Court and before the authority was whether ignorance of law can be said to constitute

sufficient cause for condonation of delay; It could not be disputed that, in dealing with the question of condoning delay under Section 5 of the Limitation Act, the party has to satisfy the court that he had sufficient cause for not preferring the appeal or making the application within the prescribed time, and this has always been understood to mean that the explanation has to cover the whole of the period of delay (vide ***Ram Narain Joshi* v. *Parameswar Narain Mehta*** **[(1903) IL**R 3**0** Cal **309**]; and, therefore, the finding recorded by the authority that the appellants had failed to establish sufficient cause for their inaction was fatal to their claim; and it was unnecessary to consider the larger question of law.

6. In **H. Guruswamy and Others vs. A. Krishnaiah Since Deceased by LRS., 2025 SCC OnLine SC 54,** (on which reliance is also placed on behalf of the 2nd Respondent), the Supreme Court held that concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation; the rules of limitation are not meant to destroy the rights of parties; they are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly; the length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not; from the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation; once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and, in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations; while considering the plea for condonation of

delay, the court must not start with the merits of the main matter; the court owes a duty to first ascertain the *bona fides* of the explanation offered by the party seeking condonation; it is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced, that the court may bring into aid the merits of the matter for the purpose of condoning the delay; the question of limitation is not merely a technical consideration; the rules of limitation are based on the principles of sound public policy and principles of equity; and no court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time.

7. In **Rangku Dutta v. State of Assam, (2011) 6 SCC 358,** (on which reliance is placed on behalf of the appellant), a two judge bench of the Supreme Court expressed its agreement with the opinion of Lord Denning, in **Benjamin Leonard MacFoy v. United Africa Co. Ltd. [1962 AC 152 : (1961) 3 All ER 1169 (PC),** that if an act is *void*, then it is in law a *nullity*; it is not only bad, but incurably bad; there is no need for an order of the court to set it aside; it is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so; and every proceeding which is founded on it is also bad and incurably bad, as one cannot put something on nothing and expect it to stay there, and it will collapse.

8. In **Mukhtiar Singh v. State of Punjab, 1993 SCC OnLine P&H 18,** (on which reliance is placed on behalf of the appellant), the writ petition was filed for quashing the order passed by Additional Director, Panchayat, Punjab, exercising powers of the Commissioner to quash the order of the Collector, whereby land was ordered to be transferred to the appellant. The facts of the said case were that the Gram Panchayat had filed an application under Section 7 of the Punjab Village Common Lands

(Regulation) Act for ejectment of the petitioner from 1 Kanal of land alleging that he was an unauthorised occupant. Before the Collector it was represented that the petitioner had constructed a house and he should be permitted to purchase the same. His request was accepted. Against the order of the Collector, an appeal was filed by the Gram Panchayat, which was finally allowed.

It is in this context that the Punjab & Haryana High Court held that, neither there was any allegation nor a finding that the petitioner had constructed the house on the disputed land prior to enforcement of the Act; neither Rule 4 nor Rule 12 of the Punjab Village Common Lands (Regulation) Rules, 1964 was attracted; the Collector, thus, had no jurisdiction to transfer the disputed plot of land to the petitioner; the order being void ab initio and without jurisdiction could be ignored, and the bar of limitation would not come in the way of setting aside the void order, as had been argued by the counsel for the petitioner in the High Court; and the question of limitation in filing of the appeal was not considered by the Additional Director in the order.

9 In State of M.P. v. Syed Qamarali, 1961 SCC OnLine SC 9, (on which reliance is placed on behalf of the appellant), the Constitution Bench of the Supreme Court held that the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under Section 7 could be exercised, was totally invalid; the order of dismissal had therefore no legal existence, and it was not necessary for the respondent to have the order set aside by a court; and the defence of limitation, which was based only on the contention that the order had to be set aside by a court before it became invalid, must therefore be rejected.

10. In State of Punjab v. Gurdev Singh, (1991) 4 SCC 1, (which is referred to on behalf of the appellant), a three judge bench of the Supreme Court quoted with approval Prof. Wade, (from Wade: Administrative Law, 6th edn., p. 352) for the principle that, even where the 'brand' of invalidity" is plainly visible, there also the order can effectively be resisted in law only by obtaining the decision of the court; the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances; the order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason; in any such case the 'void' order remains effective and is, in reality, valid; it follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another.

The Supreme Court further observed that it was clear from these principles, that the party aggrieved by the invalidity of the order had to approach the court for relief of declaration that the order against him was inoperative and not binding upon him; he must approach the court within the prescribed period of limitation; and, if the statutory time limit expires the court cannot give the declaration sought for.

11. In **Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673,** (on which reliance is placed on behalf of the appellant), the Supreme Court referred to the doctrine of *stare decisis*, and to the judgements in **Raghubir Singh: (1989) 2 SCC 754,** and then to **Sher Singh v. State of Punjab: (1983) 2 SCC 344** wherein it was held that, although the Supreme Court sits in divisions of two and three Judges for the sake of convenience, it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division

Benches of three; to do so would be detrimental not only to the rule of discipline and the doctrine of binding precedents, but it would also lead to inconsistency in decisions on points of law; and consistency and certainty in the development of law and its contemporary status — both would be the immediate casualty.

12. In Bholanath Karmakar v. Madanmohan Karmakar, 1987 SCC OnLine Cal 212 : AIR 1988 Cal 1, (on which reliance is placed on behalf of the appellant), the Calcutta High Court held that, when faced with contrary decisions of the Supreme Court, the first course to be adopted by the High Court is to ascertain which one of them is decided by a larger Bench, and to govern itself by such larger Bench decision, if any.

13. In Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar, (2008) 9 SCC 54, (on which reliance is placed on behalf of the appellant), the Supreme Court, relying on Williams v. Lourdusamy: (2008) 5 SCC 647, held that, even a wrong decision would attract the principle of res judicata; the said principle however, amongst others, has some exceptions e.g. when a judgment is passed without jurisdiction, when the matter involves a pure question of law or when the judgment has been obtained by committing fraud on the court; two legal principles which would govern a case of this nature are:(i) a decision rendered without jurisdiction being a nullity, the principle of res judicata shall not apply; and (ii) If a fraud has been committed on the court, no benefit therefrom can be claimed on the basis thereof or otherwise.

14. In **Begum Shanti Tufail Ahmad Khan, In re, 2005 SCC OnLine All 1270,** (on which reliance is placed on behalf of the appellant), the Allahabad High Court held that the law of limitation is a law of repose based on rules of estoppel; it serves an important purpose of bringing finality to the state of affairs which have prevailed in the knowledge of

parties for a sufficiently long period of time; the law of limitation affirms free and uninterrupted flow of events; where a legal right has not been enforced, for long period of time, it should not be permitted to be put into motion to disturb the normal events; the residuary Article 137, as interpreted in Kerela State Electricity Board Trivendrum: (1976) 4 SCC 634, applies to all transactions where the limitation is not specifically provided; and it fixes a period of three years for taking action when the right to apply accrues.

15. In Inder Singh v. State of M.P., 2025 SCC OnLine SC 600, (on which reliance is placed on behalf of the appellant), the trial court dismissed the suit, and the first appeal preferred thereagainst was allowed declaring the appellant as the landlord of the suit property. The respondent filed a Review Petition which was dismissed on the ground that the delay was not explained with any sufficient cause. The second appeal was also filed with a delay. The High Court condoned the delay, and ordered for listing the Second Appeal for hearing on admission as well as application for stay.

It is in this context that the Supreme Court observed that there could be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which had to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation; in the present case, the dispute over title of a land was not between private parties, but rather between the private party and the State; moreover, when the land in question was taken possession of by the State and allotted for a public purpose to the Youth Welfare Department and the Collectorate, and has continued in the possession of the State, the claim of the State that it is

government land cannot be summarily discarded; the appellant had, in fact, filed an execution case for taking over possession of the land, which would demonstrate clearly the admitted position that he was not in possession thereof; thus, the matter would require adjudication on its own merits due to various reasons, *inter alia*, the fact that a new district had been formed after the initial claim of the appellant of being allotted the land; therefore the delay, in the peculiar facts and circumstances of the case, which related to land claimed by the State as government land and in its possession, persuaded them not to interfere with the Order of the High Court, as initially the suit was dismissed by the Trial Court, which decision was reversed by the First Appellate Court.

After referring to its earlier decisions in **Ramchandra Shankar Deodhar v. State of Maharashtra, (1974) 1 SCC 317**, **Collector (LA) v. Katiji, (1987) 2 SCC 107, *Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649,* N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574,** the Supreme Court held that, considering the above pronouncements, and on an overall circumspection, they were of the opinion that the Second Appeal deserved to be heard, contested and decided on merits. However, a note of caution was sounded to the respondent to exhibit promptitude in like matters henceforth and *in futuro*, failing which the Court may not be as liberal.

E.ANALYSIS:

The law of limitation is enshrined in the legal maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. (**Brijesh Kumar v. State of**

Haryana, (2014) 11 SCC 351). The law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.”. The statutory provision may cause hardship or inconvenience to a particular party, but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. An unlimited limitation would lead to a sense of insecurity and uncertainty, and, therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (**Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81).**

The law of limitation is a substantive law and has definite consequences on the rights and obligations of a party. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly as a result of negligence, default or inaction of that party. Justice must be done to both parties equally, then alone the ends of justice can be achieved. If

a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law. The Court should not give such an interpretation to the provisions which would render the provision ineffective or odious. (**V.*Balwant Singh v. Jagdish Singh*, (2010) 8 SCC 685).**

In examining whether sufficient cause has been shown, for condonation of this inordinate delay of more than a year, it must be borne in mind that Section 111(2) of the Electricity Act requires every appeal, under Section 111(1), to be filed within a period of forty-five days from the date on which a copy of the order made by the Appropriate Commission is received by the aggrieved person. The proviso to Section 111(2) enables the Appellate Tribunal to entertain an appeal, after expiry of the said period of forty-five days, only if it is satisfied that there was sufficient cause for not filing the appeal within the period of limitation of forty-five days. The crucial words in the proviso to Section 111(2) are *"if it is satisfied that there was sufficient cause for not filing it within that period".* In other words, it is only if this Tribunal were to be satisfied, for just and valid reasons, that there was sufficient cause for not filing the appeal within the period of limitation of 45 days, that the delay can be condoned.

The word "cause" in the proviso to Section 111(2) is preceded by the word "sufficient". It is not every cause for the delay which can be condoned, as this Tribunal should record its satisfaction that there was sufficient cause, justifying condonation of delay. Merriam Webster Dictionary defines the word *"sufficient"* to mean enough to meet the needs of a situation or a proposed end. "Sufficient cause" means an

adequate and enough reason which prevented the appellant from approaching the court within limitation. (**Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81)**. Consequently, the cause which the applicant is required to show should not only be adequate enough to justify their failure to file an appeal within the period of limitation, but also such as would justify condonation of the delay in invoking the appellate jurisdiction of this Tribunal beyond the stipulated period of limitation of 45 days.

An appeal, under Section 111 of the Electricity Act, lies to this Tribunal both on questions of fact and law, and is akin to a first appeal. As wide powers have been conferred on this Tribunal to pass such orders in the appeal as it thinks fit, confirming, modifying or setting aside the order appealed against, Parliament was conscious, while conferring such a power, that hearing of each appeal would take considerable time, and yet this Tribunal is statutorily required, by Section 111(5) of the Electricity Act, to endeavor to dispose of the appeal within 180 days of its institution. Any application for condonation of delay should be considered bearing in mind the afore-said factors statutorily stipulated in the Electricity Act. While we may not be understood to have held that, even in cases where sufficient cause is shown, this Tribunal would refrain from condoning the delay beyond 180 days, what this Tribunal is required, while examining whether sufficient cause is shown for condonation of the delay, is to bear in mind whether the cause as shown for the delay is such as to require the delay to be condoned, even if it, in effect, defeats the very purpose for which this Tribunal has been statutorily required to endeavour to dispose of the appeal within 180 days.

In construing the proviso to Section 111(2) of the Electricity Act, we should bear in mind two important considerations; the first consideration is that expiration of the period of limitation prescribed for filing an appeal gives rise to a right in favour of the respondent to treat the impugned order under appeal as binding between the parties; in other words, when the period of limitation prescribed has expired the party which has obtained a benefit under the law of limitation to treat the impugned order as beyond challenge, and this legal right which has accrued to them by lapse of time should not be lightly disturbed. The other consideration which cannot also be ignored is that, if sufficient cause for excusing delay is shown, discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court/tribunal in order that judicial power and discretion in that behalf should be exercised to advance substantial justice, when neither negligence nor inaction nor want of bona fides is imputable to the appellant. Even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction to condone the delay. If sufficient cause is not shown nothing further has to be done, and the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether, in its discretion, it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts, and it is at this stage that diligence of the party or its bona fides may fall for consideration, but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown, would naturally be limited only to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. (**Ramlal v. Rewa**

Coalfields Ltd., 1961 SCC OnLine SC 39 : AIR 1962 SC 361).

The applicant should show that, besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without unnecessary delay; and the test of whether or not the cause shown for the delay is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention. (**Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edn., 2005).**

The explanation furnished by the appellant, in the present appeal, for the inordinate delay of 374 days (more than one year) in filing the appeal is only of absence of awareness of the WBERC lacking inherent jurisdiction to pass the impugned order. Accepting this explanation, as sufficient cause for condoning the delay, would render the stipulation of 45 days, as the period of limitation for filing an appeal, in Section 111(2) of the Electricity Act, 2003, redundant, as such a justification can be put forth in each and every case of delay in availing the appellate remedy. If such an explanation were to merit acceptance, then this Tribunal would be required to entertain each and every appeal filed against the orders of the Commission, irrespective of the length of the delay, and the very object of prescribing a limitation of 45 days for filing an appeal, under Section 111(2) of the Electricity Act, would be rendered nugatory.

While it has no doubt been held that a liberal view should be taken in considering condonation of delay and not a hyper technical view, that does not mean that this Tribunal can ignore the length of the delay in invoking its appellate jurisdiction in all cases, irrespective of whether or not sufficient cause is shown. All that is required of this Tribunal is not to take a rigid view and to examine, on the facts of each given case, whether

the cause shown, for belatedly invoking the appellate jurisdiction, would suffice to justify condonation of the delay. In exercising discretion to condone the delay, Courts/Tribunals should draw a distinction between a case where the delay is inordinate and a case where the delay is short. In cases where the delay is considerable, the case calls for a more cautious approach, but cases where the delay is short deserve a liberal approach. **(Vedabai vs Shantaram Babu Rao Patil: (2001) 9 SCC 106).** Accepting the submission that, irrespective of the extent of delay, this Tribunal should adopt a liberal approach would defeat the very purpose for which a period of limitation for filing an appeal has been statutorily prescribed, and would require this Tribunal, even if the unexplained delay is of a few decades, to consider the claim on merits. Such a far- fetched submission does not merit acceptance.

The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play. It is a fundamental principle that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed within legal parameters. Courts should draw a distinction between delay and inordinate delay for want of bona fides. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay; and when the mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone. (**Esha Bhattacharjee v. Raghunathpur Nafar Academy: (2013) 12 SCC 649).**

Accepting the contention of Sri. Sujith Ghosh, learned Senior Counsel appearing for the applicant, that the Court should take a liberal approach irrespective of the period of delay, would practically render the provisions of Section 111(2) and its proviso redundant and inoperative. Such approach or interpretation would hardly be permissible in law. As long as the Court is satisfied that the cause shown for the delay in filing the appeal is sufficient, the length of the delay in invoking the appellate jurisdiction may not, by itself, be fatal. The cause shown for the inordinate delay in filing the present appeal is, however, wholly insufficient. The inordinate and unexplained delay of 374 days in filing the present appeal, does not justify its condonation.

In terms of the proviso to Section 111(2) of the Electricity Act, 2003 this Tribunal has the discretion to entertain an appeal, even after expiry of the period of 45 days stipulated in Section 111(2) to prefer an appeal. The discretion conferred on this Tribunal under the proviso to Section 111(2) is neither unfettered nor can it be exercised on its mere whim and fancy. The proviso to Section 111(2) requires this Tribunal to record its satisfaction that there was “sufficient cause” for the Appellant in not filing the Appeal within the stipulated period of 45 days. It is not every cause, shown by the Appellant for the delay, which would justify entertaining a belated appeal but only such a cause which this Tribunal is satisfied as constituting a cause sufficient to condone the delay in filing the appeal.

It is necessary for us, therefore, to examine whether the Appellant has. in the application filed by them shown sufficient cause for condonation of the delay of 374 days, ie for a period exceeding one year, which is more than twice the period stipulated in Section 111(5) for this Tribunal to finally dispose of the main appeal itself. All that is stated in the

said application is that the Applicant had, in September/October, 2024, sought legal advice and assistance for the purpose of filing the petition before the Appropriate Commission seeking extension of time to achieve the Scheduled Commercial Operation Date on account of force majeure events; and it is at this juncture, ie at the stage of seeking legal advice, was it brought to the attention of the Applicant that the WBERC had wrongly exercised jurisdiction for the purpose of adoption of tariff on the basis of TBCB guidelines; and it is pursuant thereto, and on becoming aware of the legal infirmity in the impugned order, that the Applicant has filed the present appeal.

These reasons, according to the Applicant, constitutes sufficient cause for condonation of the delay in filing the appeal. In short, the only reason furnished, for the inordinate delay in invoking the appellate jurisdiction of this Tribunal, is the Appellant's belief that the WBERC lacked jurisdiction to entertain the petition filed by the second Respondent seeking adoption of tariff and for approval of the PPA, which belief is said to be based on legal advice which they received when they sought to file a petition seeking extension of SCOD before the CERC on 18.10.2023. Accepting this contention, urged on behalf of the Appellant, would require this Tribunal, whatever be the length of the delay in invoking its appellate jurisdiction, to first examine the plea of inherent lack of jurisdiction and, if it is satisfied that the impugned order is without jurisdiction, to then automatically condone the delay in availing the appellate remedy. The jurisdiction conferred by the proviso to Section 111(2), for this Tribunal to entertain an appeal after expiry of the said period of 45 days, is only if this Tribunal is satisfied that there was sufficient cause for not filing the appeal within time. It is only on its recording such satisfaction can this Tribunal entertain an appeal, and it is only after an appeal is entertained would this

Tribunal be entitled to examine the Appellant's claim on merits including their contention that the order is without jurisdiction.

Further, accepting the submission urged on behalf of the Appellant would mean that, even if the delay in filing the appeal is say of more than a decade or two, a plea that the impugned order suffers from inherent lack of jurisdiction would necessitate an appeal being entertained even if sufficient cause for the delay is otherwise not shown. We find it difficult to accept this submission. The word *"entertain",* used in the proviso to Section 111(2), is significant. It means "to be willing to consider or accept something". In the context of the proviso to Section 111(2), it means that this Tribunal can consider the appeal or accept it for adjudication only if the applicant-appellant shows sufficient cause for not filing the said appeal within time. It is only if this threshold is crossed, and the appeal is accepted for adjudication, can this Tribunal then examine the impugned order on its merits, and whether the said order suffers from inherent lack of jurisdiction. In other words, it is only on an appeal being entertained after condoning the delay in filing the appeal, and on this Tribunal being satisfied that there was sufficient cause for invoking the appellate jurisdiction belatedly, would this Tribunal then be entitled to examine the Appellant's contention on merits including on the question of jurisdiction.

Suffice it to hold that, in the light of the express stipulation in the proviso to Section 111(2) of the Electricity Act which enables this Tribunal to entertain a belated appeal only on its being satisfied that there was sufficient cause for condoning the delay, it is only if and after this Tribunal is satisfied that there is sufficient cause for condonation of delay can this appeal be entertained, and it is only on and after the appeal is entertained, can the Appellant's plea on merits, including that the impugned order

passed by the WBERC suffers from inherent lack of jurisdiction. be examined.

As shall be elaborated later in this order, it is not as if the Appellant's claim, of the impugned order suffering from inherent lack of jurisdiction, remains undisputed. Not only has the WBERC considered this aspect, regarding its jurisdiction to adopt the tariff and approve the PPA, in the impugned order, the Respondents have also raised a substantial defence to the Appellant's plea of the WBERC lacking inherent jurisdiction, which contentions cannot be readily brushed aside. In the absence of any other explanation furnished for the inordinate delay of more than one year in invoking the appellate jurisdiction of this Tribunal, it would be wholly inappropriate for us to condone the inordinate delay of more than one year in filing the present appeal, and entertain the appeal only in order to examine the Appellant's plea of inherent lack of jurisdiction in the WBERC to entertain the petition.

As the Appellant has not shown sufficient cause for condonation of the inordinate delay of more than one year in filing the appeal, we are satisfied that the application, seeking condonation of delay in filing the appeal, necessitates rejection.

i.SHOULD DELAY IN FILING THE APPEAL BE IGNORED WHERE A PLEA OF INHERENT LACK OF JURISDICTION IS RAISED?

The submission urged on behalf of the Appellant, in short, is that, where a plea of absence of jurisdiction is urged, the courts/tribunals should first examine such a plea, and not non-suit them on the ground of inordinate delay in invoking the appellate jurisdiction.

As noted hereinabove, the law declared by the three judge bench of the Supreme Court, in **State of Punjab v. Gurdev Singh, (1991) 4 SCC 1,** is that the party aggrieved by the invalidity of the order has to approach

the court seeking the relief of declaration that the order against him was inoperative, void and not binding upon him; he must approach the court within the prescribed period of limitation; and, if the statutory time limit expires, the court cannot give the declaration sought for. Reliance placed, on behalf of the appellant, on the two judge bench judgement of the Supreme Court in **Rangku Dutta v. State of Assam, (2011) 6 SCC 358**, and the judgement of the Punjab & Haryana High Court in **Mukhtiar Singh v. State of Punjab, 1993 SCC OnLine P&H 18**, to contend to the contrary, is of no avail for it is well settled that when a two judge Bench of the Supreme Court lays down a proposition contrary to and without noticing the ratio decidendi of the earlier three judge Bench, such a decision will not become the law declared by the Supreme Court so as to have a binding effect under Article 141 of the Constitution on all the courts within the country. (**Sakinala Harinath v. State of A.P., 1993 SCC OnLine AP 195 : (1994) 1 AP LJ 1 : (1993) 3 ALT 471). (APHC FB)).**

As noted hereinabove, the Supreme Court, in **Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673,** relying on its earlier judgements in **Raghubir Singh: (1989) 2 SCC 754** and **Sher Singh v. State of Punjab: (1983) 2 SCC 344,** held that, if a Division Bench of two Judges starts overruling the decisions of Division Benches of three, it would be detrimental not only to the rule of discipline and the doctrine of binding precedents, but it would also lead to inconsistency in decisions on points of law; and consistency and certainty in the development of law and its contemporary status — both would be the immediate casualty.

The Appellant, however, relies on the Constitution Bench judgment of the Supreme Court, in ***State of M.P.* v. *Syed Qamarali* : (1967) 1 SLR 228 (SC)**, to contend that, where an order is passed in contravention of a

statutory provision, the defence of limitation is unavailable to the respondent. The Constitution bench judgment of the Supreme Court in **Syed Qamarali** was considered and explained by the three judge Bench judgment of the Supreme Court in **State of Punjab vs. Gurudev Singh [1991 4 SCC Page 1].**

The Supreme Court, in **State of Punjab v. Gurdev Singh, (1991) 4 SCC 1,** observed that the respondent, in ***State of M.P.* v. *Syed Qamarali* : (1967) 1 SLR 228 (SC),** was a Sub-Inspector in the Central Province Police Force who was dismissed from service on December 22, 1945; his appeal against that order was dismissed by the Provincial Government, Central Provinces and Berar on April 9, 1947; he brought the suit on December 8, 1952 on an allegation that the order of dismissal was contrary to Para 241 of the Central Provinces and Berar Police Regulations and as such contrary to law and void, and prayed for recovery of Rs 4724/5/- on account of his pay and dearness allowance as Sub-Inspector of Police for the three years immediately preceding the date of institution of the suit; the suit was decreed and, in the appeal before the Supreme Court, it was urged that, even if the order of dismissal was contrary to the provisions of law, the dismissal remained valid until and unless it was set aside and no relief in respect of salary could be granted when the time for obtaining an order, setting aside the order of dismissal, had elapsed.

After extracting Para 20 of the judgement in ***State of M.P.* v. *Syed Qamarali*** **[(1967) 1 SLR 228**, the Supreme Court, in **State of Punjab v. Gurdev Singh, (1991) 4 SCC 1**, observed that the Supreme Court, in ***Syed Qamarali*** , had only emphasized that, since the order of dismissal was invalid being contrary to Para 241 of the Berar Police Regulations, it need not be set aside; it should be noted that Syed Qamarali had brought

the suit within the period of limitation; he was dismissed on December 22, 1945; his appeal against the order of dismissal was rejected by the Provincial Government on April 9, 1947; he had brought the suit, which had given rise to the appeal before the Supreme Court, on December 8, 1952; and the right to sue accrued to Syed Qamarali when the Provincial Government rejected his appeal affirming the original order of dismissal; and the suit was brought within six years from that date as prescribed under Article 120 of the Limitation Act, 1908.

The three judge bench of the Supreme Court, in **Gurudev Singh,** has clearly held that the question of limitation did not arise on the facts of the case in **Syed Qamarali,** and consequently the said judgment had no application. In other words, the law declared by the Supreme Court in **Syed Qamarali** cannot be understood to mean that, where an order is alleged to have been passed without jurisdiction, the provisions of the Limitation Act is inapplicable.

In view of the judgement of the Supreme Court in **State of Punjab v. Gurdev Singh, (1991) 4 SCC 1**, explaining the law declared in its earlier Constituion Bench judgement in ***State of M.P.* v. *Syed Qamarali*: (1967) 1 SLR 228,** the appellant cannot rely on ***Syed Qamarali*** to contend that, when a plea of absence of jurisdiction is raised, this Tribunal is required to examine the said contention ignoring the inordinate delay in filing the appeal, for it is settled law that when a decision rendered by a larger Bench is interpreted subsequently by a smaller Bench of the Supreme Court, the lower courts in the hierarchy must follow the latter decision.(**Sakinala Harinath v. State of A.P., 1993 SCC OnLine AP 195 : (1994) 1 AP LJ 1 : (1993) 3 ALT 471 (APHC FB)).**

The law declared by the Supreme Court, in **H. Guruswamy and Others vs. A. Krishshnaiah [2025 SCC OnLine SC 54]**, is that, while

considering the plea for condonation of delay, the court must not start with the merits of the main matter; it should first ascertain the bona fides of the explanation offered by the party seeking condonation of delay; and it is only if sufficient cause is assigned by the litigant, and the opposition of the other side is equally balanced, that the court can examine the merits of the matter for condoning the delay. It is only if we were satisfied regarding the sufficiency of the cause and condoned the delay, could we then have examined the appeal on its merits, including on the question whether the impugned order suffers from inherent lack of jurisdiction.

As we are satisfied that the Appellant has not shown any other cause, much less sufficient cause for the inordinate delay of 374 days in filing the appeal (ie of more than a year), it is unnecessary for us to examine whether or not the Appellant's claim of ignorance of law, i.e. their claimed ignorance of the WBERC lacking jurisdiction to adopt the tariff, is a factor to be considered in denying their claim for condonation of delay, on the ground that ignorance of law is no excuse.

ii.JUDGEMENTS RELIED ON BEHALF OF THE APPELLANT:

Let us now examine the Judgments relied on behalf of the Appellant ie (1) **Central Board of Dawoodi Bohra vs. State of Maharashtra: 2005 2 SCC 673,** (2) **Bholanah Karmakar vs. Madanmohan Karmakar: 1987 SCC OnLine Calcutta 212**, (3) **Raju Ramsing vs. Mahesh Deorao: 2008 9 SCC 54,** (4) **Begum Shanti Tufail Ahmad Khan (2005 SCC OnLine Allahabad 1270**, and (5) **Inder Singh vs. State of Madhya Pradesh [2025 SCC Online SC 600]**,

In **Central Board of Dawoodi Bohra vs. State of Maharashtra [2005 2 SCC 673 Para 12**, the Supreme Court relied on **Raghubir Singh**

:1989 2 SCC 754 to hold that, where conflicting views are expressed by a smaller bench without noticing the earlier larger Bench judgement, lower courts in the hierarchy must necessarily follow the law declared by the Constitution Bench. A similar view was taken in **Bholanah Karmakar vs. Madanmohan Karmakar: 1987 SCC OnLine Calcutta 212**. The afore-said principles would have applied if the three judge bench of the Supreme Court, in **Gurudev Singh,** had failed to notice the earlier Constitution Bench judgement in **Syed Qamarali**. In the present case, the three judge bench of the Supreme Court, in **Gurudev Singh,** has taken note of the Constitution Bench judgement in **Syed Qamarali**, and has explained the law declared in the said judgment.

Lower Courts in the hierarchy must, therefore, understand the law laid down by the Constitution Bench in **Syed Qamarali** as explained by the three judge bench of the Supreme Court in **Gurudev Singh,** for it is impermissible for lower courts/tribunals in the hierarchy to doubt the correctness of the law declared by the three judge bench of the Supreme Court in **Gurudev Singh,** as the said judgment is binding on it under Article 141 of the Constitution of India. Where the judgement of the larger bench/ Constitution bench of the Supreme Court has been considered and explained by a smaller bench of the Supreme Court, lower courts in the hierarchy are required, in view of Article 141 of the Constitution of India, to follow the law laid down in the smaller bench judgement, and not to doubt the correctness of the law declared therein. It is only where the smaller bench fails to notice or consider the earlier larger bench judgement of the Supreme Court, should lower courts/tribunals in the hierarchy follow the earlier larger bench judgement, and not the latter smaller bench judgement.

In view of Article 141 of the Constitution, all courts/tribunals in India are bound to follow the decisions of the Supreme Court. Judicial discipline requires, and decorum known to law warrants, that appellate directions should be taken as binding and followed. In the hierarchical system of courts which exists. it is necessary for each lower tier to accept loyally the decisions of the higher tier. The judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted. (**Cassell & Co. v. Broome : [1972] 1 ALL ER 801 (HL); SMT. KAUSHALYA DEVI BOGRA (SMT) v. THE LAND ACQUISITION OFFICER, 1984 2 SCC 324).** When the Supreme Court decides a principle it would be the duty of the subordinate Court (or for that matter a statutory tribunal) to follow the said decision. A judgment of the High Court (or Tribunal) which refuses to follow the decision and directions of the Supreme Court is a nullity. (***Narinder Singh* v. *Surjit Singh*, (1984) 2 SCC 402); *Kausalya Devi Bogra* v. *Land Acquisition Officer*, (1984) 2 SCC 324; *Municipal Corporation of Guntur, Guntur* v. *B. Syamala Kumari*, 2006 SCC OnLine AP 838; *Somprakash* v. *State of Uttarakhand*, 2019 SCC OnLine Utt 648; *Director of Settlements, A.P.* v. *M.R. Apparao*, (2002) 4 SCC 638).**

The law declared, in **Raju Ramsing vs. Mahesh Deorao: 2008 9 SCC 54,** is that principles of res judicata would not apply where a judgment is passed without jurisdiction. In **Begum Shanti Tufail Ahmad Khan: 2005 SCC OnLine Allahabad 1270**, the Supreme Court held that the law of limitation is based on the rule of estoppel, and where a legal right has not been enforced for a long period of time, it should not be permitted to be put into motion to disturb normal events. The Appellant relies on the said judgment to contend that, since the rule of estoppel does

not apply to an order passed without jurisdiction, inferentially, the law of limitation would also not apply in such cases.

Firstly, a judgment is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in the judgment. (***State of Orissa* v. *Sudhansu Sekhar Misra: AIR 1968 SC* 647; *Quinn* v. *Leathem*, [1901] A.C. 495).** As a case is only an authority for what it actually decides, it cannot be quoted for a proposition that may seem to follow logically from it. (***Quinn* v. *Leathem* [1901] A.C. 495; *State of Orissa* v. *Sudhansu Sekhar Misra*, (1968) 2 SCR 154)**. Judgments ought not to be read as statutes. (***Sri Konaseema Cooperative Central Bank Ltd.* v. *N. Seetharama Raju*, AIR 1990 AP 171; *Kanwar Amninder Singh* v. *High Court of Uttarakhand*, 2018 SCC OnLine UTT 1026).** A stray sentence in a judgment cannot be read out of context.***NL* v. (*GERC* (Order of APTEL in Appeal No. 371 of 2023 dated 09.11.2023)**.

Secondly, it is not a profitable task to extract a sentence here and there from a judgment and to build upon it. (***Quinn* v. *Leathern*, [1901] A.C. 495; *State of Orissa* v. *Sudhansu Sekhar Misra*, AIR 1968 SC 647; *Delhi Administration (NCT of Delhi)* v. *Manohar Lal*, (2002) 7 SCC 222; *Dr. Nalini Mahajan* v. *Director of Income-tax (Investigation)*, (2002) 257 ITR 123 Delhi) and *Bhavnagar University* v. *Palitana Sugar Mill P. Ltd.*, (2003) 2 SCC 111; *B.F. Ditia* v. *Appropriate Authority, Income-Tax Department*, 2008 SCC OnLine AP 904; *Sri. Konaseema Cooperative Central Bank Ltd.* v. *N. Seetharama Raju*, AIR 1990 AP 171; *Kanwar Amninder Singh* v. *High***

Court of Uttarakhand*, 2018 SCC OnLine UTT 1026**) A word here or a word there should not be made the basis for inferring inconsistency or conflict of opinion. Law does not develop in a casual manner. It develops by conscious, considered steps. (Sri. Konaseema Cooperative Central Bank Ltd.* v. *N. Seetharama Raju*, AIR 1990 AP 171).**

In any event, the Appellant has only raised a plea of absence of jurisdiction, and it is not as if this Tribunal has held that the impugned order passed by the WBERC suffers from inherent lack of jurisdiction.

In **Inder Singh vs. State of Madhya Pradesh [2025 SCC Online SC 600]**, the Supreme Court held that, in the peculiar facts and circumstances of the case which related to a land claimed by the State as government land and which was in its possession, they were not persuaded to interfere with the impugned order, more so, when the suit dismissed by the Trial Court was reversed by the First Appellate Court. The Supreme Court concluded holding that, on an overall circumspection, they were of the opinion that the Second Appeal deserved to be heard, contested and decided on merits. However, a note of caution was sounded to the respondent to exhibit promptitude in like matters henceforth, failing which the Court may not be as liberal. The Supreme Court, in **Inder** Singh, refused to interfere with the order of the High Court condoning the delay in the peculiar facts of the case where the land was government land, and was right through in its possession.

In this context, it should be borne in mind that a judgment is an authority only in regard to its ratio which is required to be discerned. A decision cannot be regarded as an authority in regard to its conclusion alone or even in relation to what could be deduced therefrom. **(Suneja Towers (P) Ltd. v. Anita Merchant, (2023) 9 SCC 194).** Broadly

speaking, every judgment of Superior Courts has three segments, namely, (*i*) the facts and the point at issue; (*ii*) the reasons for the decision; and (*iii*) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of the Supreme Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment, and not the final order in the judgment, which forms a precedent. **(Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720; Suneja Towers (P) Ltd. v. Anita Merchant, (2023) 9 SCC 194).** The final decision, rendered, in the facts and circumstances of a given case, does not necessarily constitute a binding precedent.

iii. BONAFIDES OF THE APPELLANT IN INVOKING THE APPELLATE JURISDICTION BELATEDLY:

The Appellant claims that they were under the bonafide belief that the WBERC rightly assumed jurisdiction on the basis of the application filed by the second Respondent seeking adoption of tariff; it is in such circumstances that the Applicant did not raise any objection at the time of tariff adoption proceedings pursuant to which the impugned order was passed; and pursuant thereto the Applicant had diligently proceeded with the execution of the project by undertaking critical activities.

The inordinate delay, of more than one year, in filing the appeal is sought to be justified on the ground that the Applicant was under the bonafide belief that the WBERC had rightly assumed jurisdiction in the

matter; and, as the reasons for the delay in filing the appeal was bonafide, genuine and unintentional, the delay ought to be condoned. The Applicant-Appellant also stated that rejection of the appeal, on the ground of delay, would set a wrong precedent, and would result in substantial injustice; and it would also amount to taking a hyper technical and pedantic view of the law.

The Appellant's conduct, in belatedly invoking the appellate jurisdiction of this Tribunal, is of considerable significance, for it is well settled that If the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. **(Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157);** and, when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. **(N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123).**

The second Respondent had initiated a tariff based competitive bidding process for selection of wind solar hybrid power developers by issuing a request for selection dated 08.02.2023. The bidding was conducted in terms of the tariff based competitive bidding guidelines issued by the Government of India under the National Wind Solar Hybrid Policy dated 14.05.2019. The Appellant was found to be the successful bidder and, on their having agreed to enter into a PPA at the reduced rate of Rs. 2.92/kWh for the entire contract period of 25 years, a letter of award was issued on 29.05.2023. In terms of the letter of award issued earlier, a PPA was executed between the Appellant and the second Respondent on 28.06.2023. The scheduled commissioning date was 24 months from

the effective date of the PPA ie 28.06.2023. In other words, the scheduled commissioning date was 28.06.2025.

By its order, in Case No. PPA-125/23-24 dated 31.08.2023, the WBERC approved the Power Purchase Agreement dated 28.06.2023 executed between the Appellant and the second Respondent for purchase of 150 MW wind solar hybrid power by the second Respondent, from the Appellant for a period of 25 years, at the uniform tariff of Rs. 2.92/kWh for the entire period of the PPA of 25 years. The WBERC had neither varied the terms and conditions of the PPA executed between the Appellant and the second Respondent nor had they tinkered with the tariff agreed to by the Appellant of Rs. 2.92/kWh, which had resulted in the letter of award being issued in their favour, and thereafter in a PPA being executed.

Accepting the submission, now urged on behalf of the Appellant that it is the CERC which alone has jurisdiction to adopt the tariff, would only mean that CERC would be required to hear the petition for adoption of tariff merely to reiterate what the WBERC had held earlier in the impugned order. In this context it is useful to bear in mind that courts/tribunals would not undertake an examination of academic issues, and it is only if a party, invoking its jurisdiction, is able to show that it has a valid and a genuine grievance as a result of the order impugned in the appeal. would this Tribunal entertain the appeal and examine whether the grievance of the Appellant necessitate redressal.

iv.EVENTS WHICH TOOK PLACE AFTER THE IMPUGNED ORDER WAS PASSED:

The table, furnished in the additional affidavit filed on 18.02.2025, shows that the Appellant had not only participated in the proceeding before the Commission without demur or protest, but had also acted upon the order passed by the WBERC on 31.08.2023. On 01.09.2023, the

Appellant had discussions regarding the location of land for finalizing the project lay out with Ecoren; on 30.10.2023, CTUIL issued in-principle grant of connectivity, and asked the Appellant to submit a bank guarantee; on 08.11.2023, the Appellant furnished the bank guarantee; on 09.11.2023, the Government of Andhra Pradesh allocated revenue land on lease basis; on 14.11.2023, a Tripartite Agreement was executed between the Appellant, NREDCAP and Erecon; on the same day NREDCAP sanctioned transfer of 49.50 MW solar capacity to the Appellant; on 19.01.2024, NREDCAP issued a letter to the State Government proposing transfer of government land; and on 04.03.2024, the Appellant executed a terms sheet with various vendors towards supply wind turbine generators. The table refers to various other events which we see no reason to burden this judgment with. Suffice it to note that the Appellant filed a petition before the CERC on 18.10.2024 seeking a declaration that cancellation of the project capacity and land allotment by the Government of Andhra Pradesh were force majeure events, as a result of which the appellant was entitled for extension of SCOD in terms of the PPA. After having filed such a petition before the CERC on 18.10.2024, the Appellant then filed the present appeal on 23.10.2024 contending that the tariff adoption order passed by the WBERC was without jurisdiction.

The Appellant herein filed Petition No. 506/MP/2024 before the Central Electricity Regulatory Commission (“CERC” for short) under Section 79 of the Electricity Act read with Regulation 65 of the CERC (Conduct of Business) Regulations, 2023 and Article 4.5 of the Power Purchase Agreement dated 28.06.2023 seeking extension of the schedule commercial operation date of its project under the power purchase agreement dated 28.06.2023 on account of force majeure

events. In the said petition the Applicant-Appellant sought (i) a declaration that the event of cancellation of transfer of land allocation vide Letter dated 05.03.2024, and the A.P. Government Order dated 05.06.2024, qualified as Force Majeure Events under Article 11 of the PPA as it had obstructed and delayed completion of the project; (ii) a declaration that, as a consequential relief under Article 4.5 of the PPA, the Applicant-Appellant was entitled to extension of SCOD; and (iii) in the interim, the Respondent-CESC Limited be directed to refrain from taking any coercive steps including invocation of the Bank Guarantee against the Applicant-Appellant during the extended time so granted by the Commission for achieving the SCOD.

During the hearing held before the CERC on 28.01.2025, it was stated on behalf of the Applicant-Appellant that their project was located in the State of Andhra Pradesh, and electricity was being supplied to the Respondent-CESC in the State of West Bengal; the Applicant-Appellant Project had a composite scheme for generation and sale of electricity in more than one State, thereby falling within the ambit of Section 79(1)(b) of the Electricity Act; however, tariff in respect of the above project was adopted by the West Bengal Electricity Regulatory Commission which the Applicant-Appellant has contested in an appeal before APTEL; and the said appeal was pending and listed for hearing on 11.02.2025.

In its order in Petition No. 506/MP/2024 dated 21.03.2025, the CERC noted that by its earlier order dated 28.01.2025, considering that the issue of jurisdiction vis-à-vis the ‘Appropriate Commission’ was pending before APTEL in an appeal filed by the Applicant-Appellant; and the Commission, with the consent of both parties, had adjourned the matter sine die. The Applicant-Appellant was granted liberty to mention the matter upon any development in its appeal before APTEL. In its order

dated 21.03.2025, the CERC further noted that the Applicant-Appellant had submitted that, in view of certain developments in the matter, it did not wish to pursue the present Petition any further; and they, therefore, prayed that the present Petition be disposed of as withdrawn, with liberty to approach the Commission at a later stage, if so advised. Considering the submissions made by the Applicant-Appellant, the CERC permitted them to withdraw the Petition with liberty to approach the Commission in accordance with law, Accordingly, the Petition was disposed of as withdrawn.

Apart from their claim that the impugned order passed by the WBERC suffers from inherent lack of jurisdiction, the Appellant has not shown how they are aggrieved by the order impugned in the appeal, in as much as the WBERC had accorded approval to the PPA executed between he Appellant and the second Respondent, without effecting any changes thereto, and had also adopted the tariff which the Appellant had itself agreed to.

It is therefore necessary for us to examine the Respondents plea that the application, filed by the appellant-application seeking condonation of delay, lacks bonafides, and is merely a disguised attempt to obtain extension of SCOD even without an application seeking extension of SCOD, and thereby avoid having to establish their claim for extension of SCOD because of force majeure events, and an adjudication of such a claim by the appropriate Commission.

Para 11 of the Additional Affidavit filed by the Appellant before this Tribunal on 18.02.2025 details the chain of events in a tabular form. Serial No. 15 thereto relates to the event dated 31.08.2023, and it is stated that, in Case No. PPA-125/23-24, Respondent No.1-WBERC had adopted the tariff for the project at Rs.2.92/kWh; since the 2nd Respondent was a

distribution licensee within the State of West Bengal, the Appellant had bona fide reasons to believe that WBERC was the Appropriate Commission within the provisions of the Electricity Act, 2003; and, therefore, the Appellant never objected to the exercise of jurisdiction by the 1st Respondent-WBERC for the purpose of adoption of Tariff and approval of the PPA.

As noted hereinabove, the Appellant had filed a petition before the CERC on 18.10.2024 seeking extension of the SCOD on account of, what it contended to be, force majeure events. It is only, thereafter, on 23.10.2024 that the present Appeal was filed contending that the impugned order suffered from inherent lack of jurisdiction. The present appeal does not seem to have been filed bona fide, and appears to be a disguised attempt to obtain extension of the SCOD even without an adjudication as to whether or not force majeure events disabled the Appellant from adhering to the Scheduled Commercial Operation Date.

The Appellant executed a Power Purchase Agreement with the Respondent-CESC Limited on 28.06.2023. Article 2 thereof relates to the terms of the Agreement and Article 2.1 to the Effective Date. Article 2.1.1 stipulates that the Agreement shall come into effect from 28.06.2023 and such date shall be referred to as the Effective Date. Article 2.1.3 stipulates that, notwithstanding the Effective Date, the condition precedent for the enforcement of the obligations of either party against the other under this Agreement shall be that, within 120 days after the Effective Date of the PPA, CESC shall obtain adoption of tariff from SERC and/or CERC, on the terms and conditions contained in the Agreement. The Parties agreed that, in the event the order of adoption of tariff, as mentioned above, is not issued by the SERC and/or CERC (as applicable) within the time specified above, the provisions of Article 2.1.4 shall apply. Article 2.1.4 stipulates

that, pursuant to Article 4.2.6, if parties have mutually extended the time period as stipulated under Article 2.1.1, and the order from the SERC and/or CERC (as applicable) is issued within the timeline as per Article 2.1.3, no extension for Financial Closure or Scheduled Commissioning Date shall be given. However, if the requisite SERC and/or CERC (as applicable) order is issued after the timeline as per Article 2.1.3, this shall entail a corresponding extension in Scheduled Financial Closure and the Scheduled Commissioning Date for equal number of days for which the SERC and/or CERC order has been delayed beyond such period as specified in Article 2.1.3. Article 4.5 relates to Extensions of Time and provides, among others, that any delay in adoption of tariff by the Appropriate Commission, beyond 120 days after the Effective Date of this Agreement, shall entail a corresponding extension in Scheduled Commissioning Date.

As noted hereinabove, Article 2.1.3 of the PPA required the 2nd Respondent, within 120 days after the effective date of the PPA, to obtain adoption of tariff from the Commission. If the order of adoption of tariff is not issued by the Commission within the said period, then Article 2.1.4 would apply. Article 2.1.4 stipulates that pursuant to Article 4.2.6, if the requisite order is issued by the Commission after the timelines specified in Article 2.1.3, this would entail a corresponding extension in the Scheduled Commissioning Date for a equal number of days for which the order of Commission has been delayed beyond 120 days. Article 4.5 which relates to extension of time provides, among others, that any delay in adoption of tariff by the Commission, 120 days after the effective date, shall entail a corresponding extension in the Scheduled Commissioning Date.

If, as is sought by the appellant, the impugned order passed by the WBERC were to be set aside, then its consequence would be that the tariff must be held not to have been adopted till date and, as a result, the Appellant would be automatically entitled for extension of the Scheduled Commissioning Date. This would enable the appellant to avoid the liability to pay Liquidated damages in terms of the PPA, and disable the respondents from encashing the bank guarantee furnished by the appellant in their favour. Yet another benefit which may possibly accrue to the Appellant in the process is as noted in the order impugned in this appeal. In the Impugned Order, the Commission has noted that, in terms of the order of the Ministry of Power dated 23.11.2021, ISTS charges would not be applicable for renewable energy projects, including solar, wind etc, commissioned up to 30.06.2025; no Inter-State Transmission Charges would be levied on transmission of electricity generated from solar and wind sources through ISTS for sale of power by the projects, to be commissioned within 30.06.2025, for 25 years from the date of commissioning of the projects as per the notification of the Ministry of Power dated 23.11.2021 read with the amendment dated 30.11.2021; since the Scheduled Commissioning Date of the proposed project was 28.06.2025, no ISTS charges would be applicable; further as per Clause 4.2.6 of the PPA, ISTS charges are to be borne by the Appellant in case of any delay in commissioning of the project beyond 30.06.2025 due to reasons attributable to the Appellant.

Delay in commissioning the plant, beyond 30.06.2025, would result inInter-State Transmission charges being levied on transmission of electricity generated by the Appellant. ISTS charges would be required to be borne by the Appellant, in case commissioning of the project is delayed beyond 30.06.2025. The liability to pay Inter-State Transmission charges

would be fastened on the Appellant, in terms of Clause 4.2.6 of the PPA, only if the delay in commissioning the project is for reasons attributable to the Appellant.

The endeavor of the Appellant, to put the jurisdiction of the WEBERC to pass the impugned order in issue, appears to be to obtain extension of SCOD without having to bear the burden of payment of ISTS charges, since an order without jurisdiction would be a nullity, and a fresh order of approval of tariff being passed by the CERC cannot be held to be for reasons attributable to the Appellant. While it is no doubt true that such may also possibly be the result in case the Appellant's claim, of force majeure events disabling them for commissioning the project, were to be accepted, the Appellant appears, by filing the present appeal, to seek to avoid an adjudication of their claim that force majeure events disabled them from commissioning the project. The submission urged on behalf of the Respondents, that the present appeal is a disguised attempt to secure extension of SCOD, while at the same time avoid the liability to pay inter-state transmission charges and liquidated damages, and is not bona fide, cannot be readily brushed aside.

VI.DOES THE IMPUGNED ORDER SUFFER FROM INHERENT LACK OF JURISDICTION?

A.SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT COMMISSION:

Sri. C.K. Rai, Learned Counsel for the 1st Respondent Commission, would submit that the appellant has not made out a case of of inherent lack of jurisdiction; the appropriate Commission is the 'State Commission' as per para 5 of the "Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid connected Wind Solar Hybrid

Project" dated 14.10.20; even otherwise, Section 64(5) of the Electricity Act, 2003, as interpretated by the Supreme Court in **Energy Watchdog (2017) 14 SCC 80** para 29. would apply if, by application of the parties, jurisdiction is given to the State Commission having jurisdiction in respect of the distribution licensee; the judgement of the Supreme Court in **Energy Watchdog** was relied by this Tribunal in **M.P. Power Management Company Ltd. Vs MPERC & Ors: (Judgement in Appeal 327 of 2018 & Batch dated 19.08.2020)** to hold that, even in case of a composite scheme, the State Commission has jurisdiction; **Energy Watch Dog** was also relied upon by this Tribunal, in its Judgement in Appeal No. 150 of 2017 & Batch dated 06.08.21; the present case is not a case of an Order without jurisdiction or a nullity or a void order: it is clear from the *CBG Guidelines under which the* subject bidding took place read with Section 64 (5) of Electricity Act, 2003, and the judgements of the Supreme Court and this Tribunal, that the impugned order is not a void order or an order without jurisdiction; and the judgements relied on behalf of the Appellant are distinguishable, and are not applicable to the facts of the present case.

B. SUBMISSIONS URGED ON BEHALF OF THE SECOND RESPONDENT:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the second respondent, would submit that, even on merits, the present Appeal is liable to be dismissed since: (i) the WBERC, vide the Impugned Order, has assumed jurisdiction in terms of Clause 5.1 of the WSH Guidelines read with Section 64(5) of the Act whereby, in case the project is supplying power to Distribution Licensee(s) of one State, the appropriate Commission shall be the State Commission; the appellant has not challenged the WSH Guidelines and, in any event, such challenge cannot

be raised before this Tribunal. (ii) the Impugned Order challenged by the appellant, in the present Appeal, is also a PPA approval order, in terms of Section 86(1)(b) of the Electricity Act; and (iii) the appellant, vide its Additional Affidavit dated 18.02.2025, has itself stated that it was under the belief that the WBERC was the Appropriate Commission under the provisions of the Electricity Act.

C.JUDGEMENTS RELIED UPON UNDER THIS HEAD:

In **Energy Watchdog v. CERC, (2017) 14 SCC 80,** (on which the first respondent places reliance upon), the Supreme Court held that a composite scheme means nothing more than a scheme by a generating company for generation and sale of electricity in more than one State; Section 64(5) begins with a non obstante clause which would indicate that in all cases involving inter-State supply, the Central Commission alone has jurisdiction; Section 64(5) can only apply if, the jurisdiction *otherwise* being with the Central Commission alone, by application of the parties concerned, jurisdiction is to be given to the State Commission having jurisdiction in respect of the licensee who intends to distribute and make payment for electricity.

D.ANALYSIS:

While it would be wholly inappropriate for us, having held that the Appellant has not shown sufficient cause for the inordinate delay, of more than a year, in filing the appeal, to examine the rival contentions on whether or not the impugned order suffers from inherent lack of jurisdiction, we deem it appropriate to note the relevant statutory and other provisions which would go to show that the objection raised by the respondents to the Appellant's plea, of absence of jurisdiction in the WBERC to pass the impugned order, cannot be readily brushed aside, and it is not as if the Appellant's claim would have necessitated

acceptance without a detailed examination of the rival contentions, in case the appeal had been entertained.

The Appellant's case, in short, is that it is a generator located in the State of Andhra Pradesh and. since the PPA it has executed with the second Respondent is for supply of electricity to the State of West Bengal, it would be an inter-State supply of electricity falling within the ambit of Section 79(1)(b) of the Electricity Act, 2003, and consequently the jurisdiction under Section 63, for adoption of the tariff, lies only with the CERC. The submissions urged on behalf of the Respondents, on the other hand. is based on Section 64(5) and Section 86(1)(b) of the Electricity Act read with Clause 5.1 of the Government of India guidelines.

Section 64 of the Electricity Act relates to the procedure for tariff order. Section 64(5) stipulates that, notwithstanding anything contained in Part X, the tariff for any inter- State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, be determined under this Section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor. Section 86 relates to functions of the State Commission, and Section 86(1)(b) stipulates that the State Commission shall discharge the functions of regulating electricity purchase and procurement process of distribution licensees, including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

The Ministry of New and Renewable Energy, Government of India issued Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects,

vide proceedings dated 14.10.2020. Clause 5 of the said guidelines relates to the Appropriate Commission. Clause 5.1 stipulates that, subject to the provisions of the Electricity Act, 2003, the Appropriate Commission shall be as under:- (a) In case the hybrid power projects is supplying power to Distribution licensee(s) of one State, the Appropriate Commission, for the purpose of these bidding Guidelines, shall be the State Electricity Regulatory Commission of the concerned State where the distribution licensee(s) is located; (b) in case the hybrid power projects supplying power to Distribution licensee(s) of more than one State, the Appropriate Commission, for the purpose of these bidding Guidelines, shall be the Central Electricity Regulatory Commission; and (c) for cases involving sale of hybrid power from generating companies owned or controlled by Central Government, the Appropriate Commission shall be the Central Electricity Regulatory Commission. Since, in the present case, power is supplied by the appellant-applicant only to the 2nd Respondent (a distribution licensee in the State of West Bengal), the respondents contend, not without justification, that it is the State Commission, ie the WBERC, which has jurisdiction in terms of clause 5.1(a) of the Central Govt Bidding guidelines.

Further, in Para 3.5 of its Order in Case No. PPA-125/23-24 dated 31.08.2023, the WBERC noted that the Appellant, selected in the Competitive Bidding Process, had constituted a Special Purpose Vehicle (SPV); and the Appellant was acting as HPD for development, generation and supply of electricity to CESC (ie the 2nd Respondent) from the 150 MW Hybrid Power Project to be established by the HPD in Andhra Pradesh. In Para 3.6 of the impugned order, which related to the Appropriate Commission, the WBERC quoted Para 5 of the Guidelines for Tariff Based Competitive Bidding Process for procurement of power from

Grid Connected Wind Solar Hybrid Projects dated 14.10.2020. The Commission then observed, in Para 3.7 of the impugned order, that, since the entire power generated from the ISTS-connected Wind-Solar Hybrid Power Projects would be delivered to CESC in West Bengal, the WBERC was the appropriate Commission as per the Competitive Bidding Guidelines.

Section 64(5) of the Electricity Act begins with a non obstante clause, the effect of which is that the said provision would prevail notwithstanding anything contained in Part X of the Electricity Act, which would include Section 79(1) also. In the present case, the distribution licensee is the second Respondent which is located in the State of West Bengal and, in case Section 64(5) were to apply, then, notwithstanding Section 79(1)(b), the WBERC would have jurisdiction to pass the impugned order. In view of clause 5.1(a) of the bidding guidelines, it is possible to hold that the WBERC has jurisdiction to adopt the tariff under Section 63 of the Electricity Act. Further, among the functions which the State Commission is required to discharge, includes, under Section 86(1)(b) of the Electricity Act, the function to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies through agreements for purchase of power for distribution and supply within the State. It is, therefore, possible to contend that it is only the WBERC which has the jurisdiction to approve the subject PPA in exercise of its power under Section 81(1)(b) of the Electricity Act, and to adopt the tariff under Section 63 thereof.

We may not be understood to have expressed any conclusive opinion in this regard, for these questions would have necessitated examination only if we were satisfied that the Appellant had shown

sufficient cause for condonation of the inordinate delay of more than one year in filing the appeal and had, after condoning the delay, entertained the appeal. It is only if and after the appeal was entertained would this Tribunal have been justified in examining the rival contentions on whether or not the impugned order suffers from inherent lack of jurisdiction.

We have only noted the rival contentions in this regard to indicate that it is not as if the Appellant's claim, of the WBERC inherently lacking jurisdiction, is beyond dispute. We refrain from saying anything more, except to hold that the order now passed by us shall not be understood as our having adjudicated the question as to whether or not the WBERC lacked jurisdiction to pass the impugned order.

VII.SECTION 111(6) OF THE ELECTRICITY ACT: ITS SCOPE:
A.SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri. Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that, in respect of proceedings/Orders passed without jurisdiction, revisionary power is exercised by the High Courts under Section 115 of the CPC; the power of revision is essentially a part of the general appellate power invoked in a larger and wider sense, and typically attracts a limitation period different from appellate proceedings; such revisionary power is also available with this Tribunal under Section 111(6) of the Electricity Act; the said provision does not admit of any limitation period and, by application of well-settled general law, a reasonable limitation period of 3 years can be read in as under Entry 137 of the Limitation Act; such power can be applied not only in aid of the appellate power under Section 111(1) but can also be exercised as an independent power ***(*Eastern Power v. GMR Vemagiri, (DB) 2018 SCC OnLine Hyd 758)***; the words "*suo moto* or *otherwise"* goes to show the wide and expansive reach of the revisionary power under Section 111(6);

an appeal can be converted by an Appellate Court into a revisionary proceeding; therefore the 45-day limitation period as provided under Section 111(2) ought not to be strictly applied; instead, the general limitation of three years in case of revision petitions ought to be considered; and, undisputedly, the present Appeal has been filed within the three year time period.

B. SUBMISSIONS URGED ON BEHALF OF THE SECOND RESPONDENT:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the second respondent, would submit that the contention of Appellant, regarding this Tribunal's revisionary powers under Section 111(6) of the Act, is erroneous since such power cannot be exercised de-hors Section 111(2) of the Act; admittedly if the Impugned Order is set aside, then the appellant's timeline based obligations will be shifted and reset, thereby achieving the extension of SCOD without the need to even establish the ground for extension of SCOD under the PPA; demonstrably, the appellant is endeavoring to achieve extension of SCOD indirectly, which arguably it cannot achieve directly under the PPA; pertinently, as per Article 4.5.2 read with Articles 2.1.3 and 2.1.4 of the PPA, the SCOD would automatically get extended if there is delay in adoption of tariff; and, hence, the appellant, vide the present Appeal, is only seeking extension of SCOD indirectly, and is not prejudiced by the Impugned Order in any other manner.

C.JUDGEMENTS RELIED UPON UNDER THIS HEAD:

In **Eastern Power Distribution Company of Andhra Pradesh Ltd. v. GMR Vemagiri Power Generation Ltd., 2018 SCC OnLine Hyd 758,** the writ petitions listed before the Division Bench raised a common question as to whether the disputes that arose between power generating

companies and power distribution companies before the bifurcation of the State, were liable to be adjudicated either by the Central Electricity Regulatory Commission (ie the CERC) or by the Andhra Pradesh Electricity Regulatory Commission (ie the APERC) or by the Telangana Electricity Regulatory Commission (ie the TSERC).

After referring to the orders passed by the APERC, the TSERC and the CERC, the Division Bench of the High Court at Hyderabad held that the basis of the order of the APERC was the theory of residuary powers under Section 105(1) of the A.P. Reorganization Act, 2014, and the basis of the order of the TSERC was the theory that every dispute could be vertically split into two parts and divided between both the Commissions; both these views were not in accordance with law; and the view taken by the CERC, on the basis of Section 79(1)(f), alone reflected the correct position in la

With respect to the contention that, since the orders passed by the APERC, before bifurcation of the State, had been subjected to review or were the subject matter of orders of remand, the fate of the review petitions or the fate of the remand orders would become uncertain if the present APERC is held not to have jurisdiction, the Division Bench held that, if the disputes in respect of which the petitions for review were pending as on the date of bifurcation related to any of the matters enumerated in Clauses (a) to (d) of Section 79(1), those review petitions should also be heard only by the Central Commission; this is based on the doctrine of necessity; though the powers of the Central Commission and the State Commission, respectively under Section 79 and Section 86 were mutually exclusive, the dispute, after bifurcation, would naturally fall from one basket to another; therefore, there is no difficulty for the Central

Commission to decide the same; even if it was not possible for the matter to be transferred from the State Commission to the Central Commission, it was possible for the Appellate Tribunal to withdraw the same from the State Commission and send it to the Central Commission; this was due to the fact that, under Section 111 (6), the appellate Tribunal had a revisional jurisdiction, *suo motu* and otherwise over the State as well as the Central Commissions; and, in addition, Section 121 of the Electricity Act, 2003 also conferred power upon the Appellate Tribunal, to issue such orders, instructions, or directions, to any appropriate Commission for the performance of its statutory functions.

D.ANALYSIS:

The jurisdiction conferred by Section 111(6) is akin to the power of revision **(PTC India Ltd. v. Central Electricity Regulatory Commission: (2010) 4 SCC 603; Indian Wind Power Association v. Tamil Nadu Generation & Distribution Corporation Limited, 2020 SCC OnLine APTEL 52).** Under Section 111(6), the appellate Tribunal has the revisional jurisdiction, which it can exercise suo motu or otherwise, over the State as well as the Central Commission. **(Eastern Power Distribution Company of Andhra Pradesh Ltd. v. GMR Vemagiri Power Generation Ltd., 2018 SCC OnLine Hyd 758).** Under Section 111(1) of the Electricity Act, the merits of an order passed by the appropriate Commission can be examined, by this Tribunal, in appeal. Under Section 111(6) of the Electricity Act, for the purpose of examining the legality, propriety or correctness of any order made by the Appropriate Commission under the Electricity Act, this Tribunal may in relation to any proceedings, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit. (**Reliance Gas Transportation Infrastructure Limited v. Petroleum and Natural**

Gas Regulatory Board, 2015 SCC OnLine APTEL 115). In **India Cements Ltd. v. Chairman, APSERC, 2011 SCC OnLine AP 417**, it has been held that the Appellate Tribunal can, under Section 111(6), interfere with the Respondent Commission's order fixing FSA on the grounds of "legality, propriety or correctness" of any order made by the Regulatory Commission.

Since the jurisdiction of this Tribunal, under Section 111(6) of the Electricity Act, has been held to be akin to the power of revision, if any order/proceeding, other than one which is the subject matter of appeal, is held to have been passed by the appropriate Commission in the exercise of a jurisdiction not vested in it by law, the said order/proceeding can be set aside in the exercise of the revisional jurisdiction under Section 111 (6) of the Act. It is open to this Tribunal, in the exercise of its powers of revision under Section 111 (6) of the Electricity Act, to examine the validity of any other order or proceeding while adjudicating the appeal under Section 111(1) of the Act. In the light of Section 111 (6), this Tribunal has the power, for the purpose of examining the legality/correctness of the order impugned in the appeal, to call for the records of any other connected order or proceedings of the Commission, and make such orders in the appeal as it deems fit.

The power of revision, conferred by Section 111(6) of the Electricity Act, is hedged by several restrictions. The said power can be exercised only while examining the legality, propriety or correctness of an order made by the Appropriate Commission under the Act (evidently, the order against which an appeal is preferred under Section 111(1)). In such situations this Tribunal is empowered, either on its own motion or otherwise in relation to any proceeding, to call for the records of such proceedings and make such order in the case as it feels fit. The

proceedings, referred to in Section 111(6), would, evidently, not be the proceeding/ order against which an appeal is preferred, for the records relating to the appeal, preferred against the impugned order, would have been, in any event, placed by the parties before the Appellate Tribunal for its consideration. What Section 111(6) refers to is any other proceeding which may have a bearing on the adjudication of the order impugned in the appeal. No such order or proceeding has been referred to by the Appellant. On the other hand, the Appellant contends that this Tribunal should, suo moto, convert the appeal into a revision, which plea is evidently taken only to avoid the limitation of 45 days prescribed for an appeal to be preferred under Section 111(2), and invoke the residuary provisions of the Limitation Act which provides for a three year period as limitation. Accepting this submission would render the period of limitation, statutorily prescribed under Section 111(2) of the Electricity Act, otiose or redundant, for, in every case of delay, a party can seek to have the appeal treated as a revision, and thereby avoid the rigor of Section 111(2) of the Electricity Act.

The submissions, urged on behalf of the appellant under this head, also necessitate rejection.

VIII.HAS THE APPELLANT SUFFERED PREJUDICE AS A RESULT OF THE IMPUGNED ORDER?

A. SUBMISSIONS URGED ON BEHALF OF THE SECOND RESPONDENT:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the second respondent, would submit that the appellant is not a 'person aggrieved under Section 111 of the Electricity Act, 2003 ("Act"), as (i) the tariff quoted by the appellant itself, during the bidding process, has been

adopted by the WBERC while approving the Power Purchase Agreement dated 28.06.2023 **;** (ii) the appellant was a part of the said tariff adoption proceedings before the WBERC; and (iii) the appellant has, subsequently, acted on the PPA, and has also sought relief(s) under such PPA by filing Petition No. 506/MP/2024 before the CERC seeking extension of the Scheduled Commercial Operation Date ("SCOD"), in terms of the PPA, on 18.10.2024 ie prior to filing the present Appeal on 23.10.2024; the appellant only withdrew the said petition (while reserving its right to re-file the same) before the CERC after hearings were conducted by this Tribunal on 11.02.2025 and 18.03.2025 in the present Appeal; and the CERC has allowed the appellant to withdraw its petition, vide its order dated 21.03.2025, with liberty to approach the CERC later without conducting any hearing.

Sri B.P. Patil, Learned Senior Counsel, would further submit that, *Arguendo* and without prejudice, had the appellant sought the setting aside of the Impugned Order within the prescribed time limit for filing the Appeal in terms of Section 111(2) of the Electricity Act, then any remedial measures to correct an anomaly would not have had the impact of shifting the date of SCOD under the PPA; and, therefore, it is clear that the appellant is, per se, not aggrieved by the Impugned Order.

B.SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri. Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that the Respondents had contended that the Appellant apparently cannot be said to be prejudiced by the Impugned Order since the said Order was merely adoption of the tariff as quoted by the Appellant; it is well settled that the doctrine of prejudice is applied in case where the objection pertains to violation of principles of natural justice, and the present lis not being a case of that nature, the said

doctrine cannot be pressed into service; in any case, an Order without jurisdiction under which the Appellant has to operate, is itself the prejudice; the Respondents cannot require the Appellant to foreclose its right to espouse the cause of the Rule of Law; for a Country governed by a written Constitution, Rule of Law binds all; no motive or adverse inference can be inferred against the Appellant for pursuing the Rule of Law; as held by Lord Denning quoted in **Rangku Dutta** (supra); the Respondent cannot claim that any right had accrued to them in the intervening period which may be adversely affected if the delay is condoned, for, as observed by Lord Denning *"…one cannot put something on nothing and expect it to stay there, it will collapse*"

C.ANALYSIS:

As noted hereinabove, the WBERC had adopted the tariff which the Appellant had agreed to, and had approved the PPA without effecting any modification thereto. The Appellant cannot, therefore, be said to have suffered any prejudice as a result of the impugned order. The submission, urged on behalf of the Appellant, is that the test of prejudice is a facet of the rules of natural justice, and cannot be extrapolated to an application seeking condonation of delay. We must express our inability to agree, for an Appeal under Section 111(1) of the Electricity Act can only be preferred by a *"person aggrieved"* by the order passed by the Appropriate Commission under the Electricity Act.

Relying on **Bar Council of Maharashtra v. M.V. Dabholkar: (1975) 2 SCC 702; Jasbhai Motibhai Desai v. Roshan Kumar: (1976) 1 SCC 671; In re Sidebothem, (1880) 14 Ch D. 458; Gopabandhu Biswal v. Krishna Chandra Mohanty: (1998) 4 SCC 447; Shobha Suresh jumani v. Appellate Tribunal, Forfeited Property: (2001) 5 SCC 755; Thammanna v. K. Veera Reddy, (1980) 4 SCC 62; Northern Plastics**

Ltd. v. Hindustan Photo Films Mfg. Co. Ltd., (1997) 4 SCC 452; and **Bansari v. Ram Phal: (2003) 9 SCC 606,** the Gujarat High Court, in **Lalbhai Trading Co. v. Union of India, 2005 SCC OnLine Guj 500,** observed that the phrase *"person aggrieved"* is wider than the phrase "party aggrieved"; generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary of otherwise or causes him some prejudice in some form or other; and a person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him.

Section 111(1) of the Electricity Act, 2003 enables "any person aggrieved", by the order made by the Appropriate Commission under the Electricity Act, to prefer an appeal to this Tribunal. The words *"any person aggrieved"* are of wide import, and bring within its ambit any person who has either suffered a legal injury or is likely to suffer a legal injury as a result of the order against which they seek to prefer an appeal. To satisfy the test of a "person aggrieved", one is required to establish that one has been denied or deprived of something to which one is legally entitled. A person can be aggrieved if a legal burden is imposed on him. As the expression "person aggrieved" has not been defined in the Electricity Act, it should be given its natural meaning, which would include a person whose interest is, in any manner, affected by the order, and these words are of wide amplitude. (**Emmar MGF Construction Pvt. Ltd. v. Delhi Electricity Regulatory Commission : (Order of APTEL in APL No. 123 of 2008 dated 08.09.2009); Tata Power Delhi Distribution Ltd. v. Delhi ERC, 2023 SCC OnLine APTEL 14; Bar Council of Maharashtra v. Dabholkar (1975) 2 SCC 702, Municipal Corpn., Greater Bombay v. Lala Pancham, 1964 SCC OnLine SC 91 and J.M. Desai v. Roshan Kumar (1976) 1 SCC 671; Reliance Industries Ltd. v. PNGRB, 2014**

SCC OnLine APTEL 5; and Rain CII Carbon (Vizag) Ltd. v. A.P. ERC, 2023 SCC OnLine APTEL 40). The expression “any person aggrieved” would mean a person who has suffered a legal grievance or legal injury or one who has been unjustly deprived and denied of something which he would have been entitled to obtain in the usual course. (**Grid Corpn. of Orissa Ltd. v. Gajendra Haldea, (2008) 13 SCC 414).** A ‘person aggrieved’ must be a man who had suffered a legal grievance, a man against whom a decision has been pronounced which had wrongfully deprived him of something, or wrongfully refused him something or wrongfully affected his title to something”. (**In Re Sidebotham Ex p. Sidebotham: (1880) 14 Ch D 458 CA; Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, (1970) 2 SCC 484).** The words “person aggrieved” include not a busy body but certainly one who had a genuine grievance because an order had been made which has prejudicially affected his interests. (**Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, (1970) 2 SCC 484).**

It is only if the Appellant is able to show that they have suffered prejudice as a result of the impugned order, can they then be held to be a *“person aggrieved”* entitled to prefer an appeal to this Tribunal under Section 111(1) of the Electricity Act. In the present case, the Appellant cannot be said to have suffered any prejudice as a result of the impugned order. If, as is contended on behalf of the Appellant, they do not intend reneging from the contract, and on this basis their claim that the WBERC lacks jurisdiction to pass the impugned order were to be accepted, it would only mean that the very same order, whereby the WBERC had adopted the tariff, should instead now be passed verbatim by the CERC. Such a needless academic exercise is wholly unwarranted. The submissions,

urged on behalf of the appellant under this head, also necessitate rejection.

IX.DOES THE APPELLANT INTEND TO RENEGE ON ITS OBLIGATIONS UNDER THE PPA?

A.SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri. Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that to allay any apprehension that the present proceeding has been taken out by the Appellant to renege its obligation under the PPA, the Appellant had filed a detailed additional affidavit setting out the myriad steps it had taken towards execution of its project and to get over the hurdles it faced vide Capacity Cancellation Letter dated 05.03.2024, and Land Cancellation Orders dated 05.06.2024, mulcted on it by the State of AP and the Nodal Agency; further, vide IA No. 491 of 2025, the Appellant had also brought on record the Capacity Transfer Agreement dated 19.03.2025 through which capacity allocation issue was resolved pursuant to the persistent follow-up by the Appellant, ever since the same was cancelled; a comfort letter dated 24.03.2025**,** that the land would also be allocated, was also annexed with the IA; any apprehension that the Appellant was pursuing parallel remedies before two forums was also allayed by furnishing a Withdrawal Order dated 21.03.2025 issued by the CERC in this respect; and, as such, no adverse inference ought to be drawn on the intention of the Appellant unlike what was alleged by the Respondent.

B.ANALYSIS:

In the additional affidavit, filed by them on 18.02.2025, the Appellant had sought to bring on record certain factual details relating to the establishment of the project as on 11.02.2025. The Appellant has referred to its having procured investments from various leading Green Energy

Funding houses, and to its having successfully constructed and commissioned utility scale projects. After furnishing details of the chain of events in a tabular form, the Appellant has stated that they have been providing monthly progress reports pertaining to the execution of the project to the second Respondent; it is fully committed to the implementation of the project, and the aforesaid actions unequivocally demonstrate their seriousness in ensuring successful execution; the Appellant has taken numerous pro-active steps, both administrative and operational, to push the project forward; it had approached the Energy Department of the Government of Andhra Pradesh for early issuance of the ICE policy to facilitate the project's registration; it had also paid the differential amount towards the transfer fee; it has persistently followed up with the authorities to ensure that the project is granted the necessary clearances; it had furnished the performance bank guarantee, achieved financial closure, obtained connectivity from CTUIL upon submission of the necessary bank guarantees; it has paid service fee to Ecoren; it has furnished bank guarantee to NREDCAP; it has also paid transfer fee; these facts demonstrate the bonafides of the Appellant and their commitment towards execution of the project; and their substantial investment in terms of time, energy and resources should be considered as unequivocal proof of their intention and commitment.

IA No. 491 of 2025 was filed by the Applicant-Appellant for bringing on record additional documents wherein they categorised the documents as (a) facts pertaining to Petition No. 506/MP/2024, and (b) details pertaining to the transfer of projects capacity. After referring to those documents the Applicant-Appellant had requested this Tribunal to allow them to bring on record the additional documents and sought the prayer to take the additional documents on records.

In the light of the afore-said affidavit, and the documents placed on record, we see no reason to delve further into the submission urged on behalf of the Respondents that the possibility of the Appellant reneging from the contract cannot be ruled out.

X.IS FAILURE TO TAKE THE OBJECTION, REGARDING INHERENT LACK OF JURISDICTION BEFORE THE WBERC, FATAL?

A. SUBMISSIONS URGED ON BEHALF OF THE SECOND RESPONDENT:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the second respondent, would submit that, In terms of Section 21 (1) of the Civil Procedure Code, 1908 (CPC), an objection regarding place of suing before an appellate or revisional court, ought to be taken in the court of first instance, and such objection cannot be dehors any prejudice caused to the party. Reliance is placed in this regard on (1) **Pathumma vs. Kuntalan Kutty. (1981) 3 SCC 589;;** and (ii) **RS.D.V. Finance Co. (P) Ltd. vs. Shree Vallabh Glass Works Ltd., (1993) 2 SCC 130.**

B.SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri. Sujit Ghosh, Learned Senior Counsel appearing on behalf of the Appellant, would submit that it was also contended on behalf of the Respondents that the objection to jurisdiction ought to have been raised at the first instance before the WBERC; it is well settled that there is a distinction between pecuniary and territorial jurisdictional issues and subject matter jurisdiction (***Chief Engineer v. Ravinder Nath, (DB) (2008) 2 SCC 350)***; and the objection. pertaining to the subject matter jurisdiction, can be raised at any stage, and even in collateral proceedings.

C.JUDGEMENTS RELIED UPON UNDER THIS HEAD:

In **Pathumma v. Kuntalan Kutty, (1981) 3 SCC 589 : 1981 SCC OnLine SC 309,** (on which reliance is placed on behalf of the 2nd Respondent), the Supreme Court, after extracting sub-section (1) of Section 21 of the Code of Civil Procedure, observed that, in order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential: (*1*) the objection was taken in the Court of first instance; (*2*) it was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement; and (*3*) there has been a consequent failure of justice.

In **R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd., (1993) 2 SCC 130,** (on which reliance is placed on behalf of the 2nd Respondent), the Supreme Court held that, of the three conditions in sub-section (1) of Section 21 of the Code of Civil Procedure, in the present case though the first two conditions were satisfied, the third condition of failure of justice was not fulfilled.

In **Chief Engineer, Hydel Project v. Ravinder Nath, (2008) 2 SCC 350,** (on which reliance is placed on behalf of the appellant), relying on its earlier decision in Harshad Chiman Lal Modi v. DLF Universal Ltd: (2005) 7 SCC 791, the Supreme Court held that the jurisdiction of a court may be classified into several categories; the important categories are (*i*) territorial or local jurisdiction; (*ii*) pecuniary jurisdiction; and (*iii*) jurisdiction over the subject-matter; so far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and, in any case, at or before settlement of issues; if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage; jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing; where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by

statute, charter or commission, it cannot take up the cause or matter; and an order passed by a court having no jurisdiction is a nullity.

D.ANALYSIS:

Section 21 of the Code of Civil Procedure relates to Objections to jurisdiction, and Section 21 (1) provides that no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. Section 21(2) stipulates that, no objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

Section 21(1) and (2) of the Civil Procedure Code, and the judgments relied on behalf of the 2nd Respondent, relate to pecuniary and territorial jurisdiction. As the law declared in the judgements relied on behalf of the 2nd Respondent, relate to pecuniary and territorial jurisdiction, they have no application to cases involving subject matter jurisdiction or an order suffering from inherent lack of jurisdiction. It needs no re-iteration that a decree passed by a court without jurisdiction over the subject matter is a nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings as it is coram non judice. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. (**Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193; Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke: (1976) 1 SCC 496; Kiran Singh**

v. Chaman Paswan: AIR 1954 SC 340; Chandrika Misir v. Bhaiya Lal: (1973) 2 SCC 474; Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136). The submission urged in this regard, on behalf of the 2nd Respondent, necessitates rejection.

XI.OTHER CONTENTIONS:

A.SUBMISSIONS URGED ON BEHALF OF THE SECOND RESPONDENT:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the second respondent, would submit that, without prejudice to the submission that the present Appeal is liable to be dismissed on the ground of delay itself without considering the merits of Appellant's prayer regarding lack of jurisdiction, in the event the prejudice caused to the appellant is only on account of the WBERC assuming jurisdiction incorrectly, the CERC can always be directed to adopt the tariff without any extension in SCOD under Article 4.5.2 of the PPA; and, further, Respondent No. 2 reserves its right to make detailed submissions on merits in case the delay is condoned by this Tribunal.

B.ANALYSIS:

Since we are not inclined to condone the inordinate delay of 374 days (ie of more than one year) in filing the present appeal, in the absence of sufficient cause being shown by the Appellant for the undue delay in invoking the appellate jurisdiction of this Tribunal, it is un-necessary for us to examine the submissions, urged on behalf of the 2nd Respondent, under this head.

XII.CONCLUSION:

This delay of more than one year in filing the appeal, if examined in the light of the statutory obligation imposed on this Tribunal to

endeavour to dispose of the main Appeal itself within 180 days, is undoubtedly inordinate. As a result, this period of delay, for which sufficient cause has not been shown, cannot be condoned, more so as it appears, in the light of the observations made earlier in this order, that the bonafides of the appellant, in invoking the appellate jurisdiction belatedly are, in doubt.

Viewed from any angle, we see no reason to condone the inordinate delay of more than one year in filing the present appeal. The application to condone the delay of 374 days (of more than one year) in filing the appeal is rejected as the Appellant has not shown sufficient cause for condonation of the delay. We, however, make it clear that we have not examined whether or not the appellant is entitled to be granted extension of SCOD on account of force majeure events.

The I.A seeking condonation of delay is accordingly dismissed, and the Appeal stands rejected. All the I.As therein stand disposed of.

Pronounced in the open court on this ***28th day of April, 2025.***

(Seema Gupta)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~